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Filing date: **10/12/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91217154
Party	Defendant Janoskians LLC
Correspondence Address	STEPHEN L BAKER BAKER AND RANNELLS PA 575 ROUTE 28 RARITAN, NJ 08869-1354 UNITED STATES officeactions@br-tmlaw.com, K.Hnasko@br-tmlaw.com, r.mcgonigle@br-tmlaw.com, s.baker@br-tmlaw.com
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Jason DeFrancesco
Filer's e-mail	jld@br-tmlaw.com, k.hnasko@br-tmlaw.com
Signature	/Jason DeFrancesco/
Date	10/12/2015
Attachments	Motion.pdf(1040674 bytes) Exhs A-C.pdf(1815221 bytes) Exh D-F.pdf(1897548 bytes) Exh G-1.pdf(4557293 bytes) Exh G-2.pdf(5970835 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NASTY PIG, INC.,	:	Opposition No.: 91217154
	:	
Opposer,	:	
v.	:	
	:	
JANOSKIANS, LLC.,	:	
	:	
Applicant.	:	

**MOTION FOR LEAVE TO AMEND ANSWER TO
ADD ADDITIONAL AFFIRMATIVE DEFENSES AND PETITION TO CANCEL**

Applicant, Janoskians, LLC. (“Janoskains”) pursuant to Fed. R. Civ. P. 15, TBMP §507.02, 15 USC §§ 1052, 1064 and 1065, and Trademark Act Section 2(a), hereby moves to amend its Answer filed on July 22, 2014 to amplify allegations already included in the Answer, add additional affirmative defenses and, based on same, petition to cancel Nasty Pig, Inc.’s registered marks for NASTY PIG as subject to U.S. Reg. Nos. 4809230 and 2800386 as the marks have vulgar meaning and or are common, generic, descriptive and or functional of the subject goods (information of which was withheld from the USPTO).

The Board should grant the instant motion for leave to amend because Janoskains just learned the information to support the amendments requested herein and because the proposed amendments will not prejudice Opposer, at least inasmuch as, any prejudice would be as a result of its own undoing. In particular, it has recently come to the attention of the Applicant that the terms “Nasty Pig” have meaning in the relevant trade which identifies a particular person (and or associated lifestyle), such that consumers understand these terms as vulgar, scandalous, common

and primarily referring to Opposer's goods and target consumer, rather than to source (information of which was withheld from the USPTO).

Accordingly, based on reasonable belief and suspicion, Opposer has committed fraud on the USPTO because it knowingly made false material representations it knew to be false, namely that "Nasty Pig" has no meaning in the relevant trade and by executing declarations in the underlying applications that became the involved registrations by stating that no other person, firm, corporation or association has the right to use the terms, and whereby said deception was relied upon by the USPTO to issue and renew same.

Justice requires these allegations be made of record and allowed to be pursued so that untenable marks (i.e., common, generic, descriptive and or functional of the subject goods should) be removed from the Principal Register of the USPTO.

WHEREFORE, Janoskians, LLC. request it be granted leave to amend its affirmative defenses and be allowed to petition to cancel Opposer's Registration Nos. 4809230 and 2800386; and, further be allowed to have discovery reopened with the limited and specific purpose of gathering documents and materials that regard meaning of "Nasty Pig" among the industry and consumers thereof.

Dated: October 12, 2015

Respectfully submitted,
Baker and Rannells, PA

By: /Jason DeFrancesco/
Jason DeFrancesco
575 Route 28, Ste. 102
Raritan, NJ 08869
(908) 722-5640

Attorneys for the Applicant,
Janoskians, LLC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Leave and accompanying Brief, Answer and Proposed Amended Affirmative Defenses to Petition For Cancellation and Proposed Counter-Petition to Cancel, and Declaration of Jason DeFrancesco in support were served by e-mail and first class mail, on counsel for Registrant, Nasty Pig, Inc., on this 12th day of October, 2015 at,

Joel Karni Schmidt
Cowan Liebowitz & Latman, PC
1133 Avenue of the Americas
New York, NY 10036

/Jason DeFrancesco/
Jason DeFrancesco

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<hr/>	:	Opposition No.: 91217154
	:	
Opposer,	:	
v.	:	
	:	
JANOSKIANS, LLC.,	:	
	:	
<hr/> Applicant.	:	

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO AMEND

Applicant, Janoskians, LLC. (“Janoskians”) submits this Brief in support of its Motion for Leave to Motion for Leave to Amend its Answer, to add additional Affirmative Defenses, and Petition to Cancel U.S. Reg. Nos. 4809230 and 2800386, pursuant to 15 USC §§ 1052, 1064 and 1065. The proposed counterclaim alleges that U.S. Reg. Nos. 4809230 and 2800386, relied upon by Opposer, Nasty Pig, Inc., are invalid for having been filed and or renewed based upon a false, material misrepresentation of fact, knowingly made by Opposer as the marks are vulgar, scandalous, common, generic, descriptive and or functional of the subject goods.

In support of this motion, Applicant submits the Declaration of Jason DeFrancesco (“Decl. DeFrancesco”) to, inter alia, attest to the referenced exhibits used in support of this motion.

INTRODUCTION

Discovery opened in this proceeding on September 10, 2014 and just recently closed on August 28, 2015 due to the matter being extended and suspended for various motions raised by the parties and since attended to by the Board.

On September 16, 2015, just after the close of discovery and while preparing this matter for trial, Applicant discovered that the term “nasty pig” is a term that has particular meaning in the relevant trade of the Opposer. (See Decl. DeFrancesco, Exhs. A and B.) In view of this material finding, the undersigned on September 18, 2015 brought this to the attention of the Opposer and requested it supplement responses to Applicant’s request for production nos. 1-9, 13-22, 25-29, and 33-41, among other things. (See Decl. DeFrancesco, Exh. E) (See also, Decl. DeFrancesco, Exh. C, Applicant’s request for production, which requests documents and materials that regard and or concern the meaning of “Nasty Pig” as a trademark for retail services and related goods that include jockstraps, gauntlets, bed sheets, rubber goods and leather harnesses, i.e., nos. 2, 5, 9, 16 and 18.)

On October 6, 2015 (*eighteen days later*) the Opposer responded by arguing that Applicant delayed in its findings and impliedly denied meaning to the term “nasty pig” that “[s]imply because Applicant believes that the term ‘nasty pig’ has a specific meaning does not mean that Opposer has any documents in its possession regarding that alleged meaning” or that it has an obligation otherwise to provide such materials. (See Decl. DeFrancesco, Exh. F.)

Notwithstanding, Opposer has not provided any materials and or documents that reveal the specific meaning of the term “nasty pig” (nor has it made this of record before the USPTO). Opposer has, however, provided some documents that regard its product, consumer and or market, and goal (i.e., “getting costumers laid”) which is consistent within the recently uncovered meaning of “nasty pig” (see Decl. DeFrancesco, Exh. G) and serves as the basis of this motion. As it stands, Opposer’s pretrial disclosures are currently due October 13, 2015 (October 12, 2015 being federal holiday) and, Opposer’s testimony period is set to close on November 26, 2015.

STANDARD FOR GRANTING LEAVE

A counterclaim for cancellation of a registration pleaded in a Board proceeding is governed by Trademark Rule 2.114(b)(2)(i). Under that Rule, where the grounds for attacking the validity of one or more registrations pleaded in a cancellation exist at the time of the answer's filing, a defense on those grounds is a compulsory counterclaim. If, however, such grounds for the counterclaim are learned during the course of the proceeding, the Rule provides for the prompt pleading of the counterclaim thereafter. *Id.*

Generally, pleadings in an opposition proceeding may be amended in the same manner and to the same extent as in United States District Court civil actions. 37 CFR § 2.107(a). Recognizing the provision of Fed. R. Civ. P. 15(a) that "leave" to amend pleadings "shall be freely given when justice so requires," the Board liberally grants leave to amend pleadings "at any stage of the proceeding where necessary to bring about a furtherance of justice unless it is shown that entry of the amendment would violate civil law or be prejudicial to the rights of any opposing parties." *Commodore Electronic Ltd. v. CBM K.K.*, 26 USPQ 2d 1503, 1505 (TTAB 1993), *American Optical Corp. v. American Olean Tile Co., Inc.*, 168 USPQ 2d 471, 473 (TTAB 1971). This liberal approach for granting leave to amend "ensures that a particular claim will be decided on the merits rather than on technicalities." *Dole v. Area Chemical Co.*, 921 F.2d 484, 487 (3d Cir. 1990).

The proper inquiry, then, in determining whether or not to grant leave to amend, is whether the proposed amendment is legally sufficient, and whether there is any undue prejudice to the nonmoving party. *Commodore Electronic Ltd.*, 26 USPQ 2d at 1505.

THE PROPOSED COUNTERCLAIM IS LEGALLY SUFFICIENT

A proposed counterclaim is legally sufficient if it alleges facts that, if proven, would establish standing to challenge the asserted registration of the Opposer and the existence of a statutory ground for the subject cancellation. See *Lipton Industries, Inc. v. Ralston Purina Co.*, 213 USPQ 185, 188 (CCPA 1982); *Commodore Electronics, Ltd., supra*. On the question of standing: Applicant's standing to bring a counterclaim in a proceeding is inherent in its position as defendant in the underlying proceeding. See *Syntex (USA) Inc. v. E.R. Squibb & Sons. Inc.*, 14 USPQ 2d 1879 (TTAB 1990).

On the more substantive question of statutory grounds alleged,

The Board has held that fraud in obtaining or maintaining a trademark registration occurs when an applicant knowingly makes false, material misrepresentations of the fact in connection with an application, a Section 8 declaration, or with an application for renewal. *Mister Leonard, Inc. v. Jacques Leonard Couture, Inc.*, 23 USPQ 2d 1064, 1065 (TTAB 1992), citing *Torres v. Cantine Torresella s.r.L.*, 1 USPQ 2d 1483, 1484 (Fed. Cir. 1986), *J. McCarthy, Trademarks and Unfair Competition*, Section 20:15, 1058 (2d ed. 1984).

The Board has held that Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a) may be asserted as grounds to cancel a registration that when used in connection with particular goods, comprises immoral or scandalous matter. See for example, *Blackhorse v. Pro-Football, Inc.*, 111 USPQ 2d (BNA) 1080 (TTAB 2014).

Furthermore, the Board has cancelled registrations of marks that are otherwise common and primarily referring to Registrant's goods and target consumer, rather than to the source; or fails to acquire secondary meaning and or incontestable status as the Registrant's marks are common, generic, descriptive and or functional of its goods. See for e.g., *Southwire Co. v. Kaiser Aluminum & Chemical Corp.*, 196 USPQ 566, 573 (TTAB 1977) (“[I]t is within the

public interest to preclude registration of merely descriptive designations, to cancel registrations which are void ab initio because of this disability of the registered mark as of the time the application was filed, and to cancel those registrations where the registered marks have, since the time of registration, become terms of art or common description.”)

Because Opposer is in the business of “getting its costumers laid” and deals in retail services and related goods that include jockstraps, gauntlets, bed sheets, rubber goods and leather harnesses, it knew that the term “nasty pig” had meaning when it sought registration and or renewal of its NASTY PIG marks. Because Opposer identifies Applicant as a competitor (Dkt. #1, ¶ 9, i.e., someone dealing in identical goods and services) Opposer should not be allowed to impose a monopoly and or thwart competition for a term apparently is commonly understood by the relevant public as identifying the customer and or genus of goods.

**THE OPPOSER WILL NOT BE PREJUDICED,
AS IT WITHHELD INFORMATION COMPLAINED OF**

The trial period for Opposer is set to close on November 26, 2015. The Opposer has not taken any testimony nor has it submitted any related brief or matter to expedite conclusion of this case. Notwithstanding, the basis for Applicant’s request to amend is grounded in the fact that Opposer concealed information from both the Applicant, and the USPTO, thereby committing fraud and supporting additional grounds for cancellation with regards to the particular meaning to the term “Nasty Pig” (see Decl. DeFrancesco, Exhs. A and B, which are on-line references that define the term “nasty pig;” *see also*, Decl. DeFrancesco, Exh. G which are public documents provided by the Opposer in this proceeding).

In *Mitek Corp. v. Woods Indus.*, after the close of Opposer's testimony period and prior to the opening of its own, Applicant filed a motion for leave to amend its answer to assert a counterclaim and a motion to reopen discovery and reset trial dates. 41 USPQ 2d (BNA) 1307(TTAB 1996). In granting the motion for leave to amend, the Board noted that even though "applicant did not aggressively pursue the discovery that might have led it to raise its counterclaim at an earlier point in this case, applicant is not required to engage in the taking of discovery. Moreover, it is also apparent that opposer was not forthcoming with information...." *Id.* at 1309.

CONCLUSION

WHEREFORE, Janoskians, LLC. request it be granted leave to amend its affirmative defenses and be allowed to petition to cancel Opposer's Registration Nos. 4809230 and 2800386 based on Opposer' sown undoing; and, further be allowed to have discovery reopened with the limited and specific purpose of gathering documents and materials that regard meaning of "Nasty Pig" among the industry and consumers thereof.

Dated: October 12, 2015

Respectfully submitted,
Baker and Rannells, PA

By: /Jason DeFrancesco/
Jason DeFrancesco
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(908) 722-5640

Attorneys for the Applicant,
Janoskians, LLC.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re: Serial No. 86/085,785
Filing Date: October 8, 2013
Mark: DIRTY PIG

NASTY PIG, INC.,	:	Opposition No.: 91217154
	:	
Opposer,	:	
v.	:	
	:	
JANOSKIANS LLC,	:	
	:	
Applicant.	:	

**ANSWER AND PROPOSED AMENDED AFFIRMATIVE DEFENSES
TO PETITION FOR CANCELLATION AND PROPOSED COUNTER-PETITION TO
CANCEL¹**

Applicant, JANOSKIANS LLC, (“Applicant”), by and through its attorneys Baker and Rannells, PA, for its Answer to the Notice of Opposition filed by Opposer, NASTY PIG, INC, (“Opposer”), alleges on knowledge as to its own acts and otherwise upon information and belief as follows:

ANSWER

1. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 1 of the Notice of Opposition and therefore denies the same.
2. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 2 of the Notice of Opposition and therefore denies the same, except that it admits the issuance of the pleaded registration.

¹ Whereby underlined identifies additional matter requested to be allowed by amendment herein

3. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 3 of the Notice of Opposition and therefore denies the same, except that it admits that Application Ser. No. 86114145 is pending and further denies it is relevant to these proceedings.

4. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 4 of the Notice of Opposition and therefore denies the same.

5. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 5 of the Notice of Opposition and therefore denies the same.

6. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 6 of the Notice of Opposition and therefore denies the same

7. Admitted.

8. Admitted.

9. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 9 of the Notice of Opposition and therefore denies the same.

10. Denied except that Applicant admits the marks of both parties include the term “pig”.

11. Denied

PROPOSED AMENDED AFFIRMATIVE DEFENSES

Applicant repeats and re-alleges the allegations of paragraphs 1-11 hereof as if set forth fully herein.

As and for a first defense, the Notice of Opposition fails to state a claim upon which relief can be granted.

As and for a second defense, the Notice of Opposition is barred by the acquiescence and laches.

As and for a third defense, the Notice of Opposition is barred by the doctrine of waiver and estoppel.

As and for a forth defense, the Notice of Opposition is barred by Opposer's failure to challenge the use of third party marks comprised in whole or in part of the term "pig" on related goods and services by unrelated third parties.

As and for a fifth defense, Applicant's mark DIRTY PIG falls far outside the scope of protection to which Opposer's mark may extend.

As and for a sixth defense, there are many 100's of third party "pig" and "pig" combination marks of record in the USPTO, thus rendering the "pig" element of Opposer's mark to be weak.

As and for a seventh defense, there were as many as 185 live third party live "pig" and "pig" combination marks of record in relevant classes in the USPTO at the time Opposer filed the application that resulted in Reg. No. 2800386, which Opposer admitted were not confusingly similar to Opposer's mark when it stated under oath in the application "...to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to

be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.”

As and for an eighth defense, except for the within opposition, Opposer has never challenged a “pig” or “pig” combination mark before the TTAB, thus acquiescing in the ongoing and continued weakening of its alleged mark.

As and for a ninth defense, the term “Nasty Pig” is descriptive, generic and or has meaning in the relevant trade, thus rendering the Opposer’s mark to be weak.

As and for a tenth defense, consumers understand NASTY PIG as primarily referring to the type of goods particular to the target consumer, rather than to the source, thus rendering the Opposer’s mark to be weak.

As and for a eleventh defense, Opposer should not have a monopoly on terms “Nasty Pig” as such is regarded by the relevant consuming public to directly identify a trait and or characteristic the consumer thereof.

And, as and for a twelfth defense, the Notice of Opposition is barred by the doctrine of unclean hands, because the Opposer committed fraud upon the USPTO when it knowingly made false material representations it knew was false, namely that NASTY PIG has no meaning in the relevant trade and by executing declarations in the underlying applications that became the involved registrations by stating that no other person, firm, corporation or association has the right to use the term NASTY PIG, and whereby said deception was relied upon by the USPTO to issue and renew same.

WHEREFORE, Applicant requests that the Opposer's Notice of Opposition be denied and that Serial No. 86/085,785 be allowed to mature to registration.

Dated: October 12, 2015

Respectfully submitted,
Baker and Rannells, PA

By: /Jason DeFrancesco/
Jason DeFrancesco
575 Route 28, Ste. 102
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(908) 722-5640

Attorneys for the Applicant,
Janoskians, LLC.

{PROPOSED}
COUNTER-PETITION TO CANCEL

Janoskians LLC, a limited liability company, organized and existing under the laws of Delaware, located and doing business at 209 East 31st Street New York, NY 10016, believes that it will be damaged by the continued registration of U.S. Reg. No. 4809230 (registered December 30, 2003) and U.S. Reg. No. 2800386 (registered September 8, 2015) in the name of Nasty Pig Inc., and hereby petitions to cancel same pursuant to 15 USC §§ 1052, 1064 and 1065.

As grounds therefor, Petitioner alleges as follows:

1. Petitioner is the owner of pending application Serial No. 86085785 for the word mark, DIRTY PIG for "belts; blouses; bottoms; flip flops; footwear; headbands; headwear; hosiery; jackets; jeans; knitted underwear; leggings; lingerie; long underwear; loungewear; mukluks; neckwear; pajamas; pants; pantyhose; robes; sandals; sarongs; scarfs; shirts; shorts; sleepwear; slipper socks; slippers; suits; sweat bands; sweat jackets; sweat pants; sweat shirts;

sweat shorts; sweat suits; thermal underwear; tops; underwear; wearable blankets in the nature of blankets with sleeves; wrist bands” in International Class (IC) 025.

2. Registrant owns U.S. Registration No. 2800386 for the word mark NASTY PIG, registered on December 30, 2003, and renewed on November 26, 2013, for “harnesses” in IC 018; “bed sheets; pillow covers; pillow cases” in IC 024; “clothing, namely, hats, pants, undershirts, vests, shirts, jackets, shorts, belts, caps, jackets, jeans, t-shirts, sweatshirts, swimwear, underwear, chaps, jerseys, tank tops, gauntlets, armbands, jockstraps” in IC 025; and for “retail store services and computerized online retail services in the field of clothing, bed and bath, leather, rubber and imitation leather goods, accessories and related items” in IC 035.

3. Registrant owns U.S. Registration No. 4809230 for the word mark NASTY PIG, registered on September 8, 2015, for “jewelry, namely, necklaces, bracelets; jewelry, namely, rings; leather goods, namely, leather jewelry; bracelets made of leather” in IC 014; and, for “leather goods, namely, leather harnesses.” in IC 035.

4. On information and belief, the term “NASTY PIG” has meaning that identifies a particular person and or associated lifestyle, whereby consumers understand “NASTY PIG” as common and primarily referring to Registrant’s goods and target consumer, rather than to the source.

5. On information and belief, the term “Nasty Pig” comprises vulgar matter and or meaning and is therefore unregistrable as scandalous under Trademark Act Section 2(a), as a substantial composite of the public perceives the mark, in context, to have a vulgar meaning, and therefore the mark as a whole consists of or comprises scandalous matter.

6. Neither registration has acquired secondary meaning and or incontestable status as the Registrant’s marks are common, generic, descriptive and or functional of its goods.

7. Registrant committed fraud on the USPTO because it knowingly made false material representations it knew was false, namely that "Nasty Pig" has no meaning in the relevant trade and by executing declarations in the underlying applications that became the involved registrations by stating that no other person, firm, corporation or association has the right to use the term NASTY PIG, and whereby said deception was relied upon by the USPTO to issue and renew same.

8. Petitioner is using the mark DIRTY PIG for goods that Registrant claims violate its rights under Registration Nos. 4809230 and U.S. Reg. No. 2800386; to wit, Petitioner offers related, same or competitive type of goods as identified in the subject registrations.

9. Because Registrant has asserted the involved registrations against Petitioner in the pending opposition proceeding between the parties. Petitioner has a personal stake in the proceeding by virtue of its position in the underlying action.

10. Petitioner is being damaged by the continued registration of the marks sought to be cancelled.

WHEREFORE, Petitioner requests that U.S. Reg. No. 4809230 and U.S. Reg. No. 2800386 in the name of Nasty Pig, Inc., be cancelled.

Dated: October 12, 2015

Respectfully submitted,
Baker and Rannells, PA

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(908) 722-5640

Attorneys for the Applicant,
Janoskians, LLC.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NASTY PIG, INC.,	:	Opposition No.: 91217154
	:	
Opposer,	:	
v.	:	
	:	
JANOSKIANS, LLC.,	:	
	:	
Applicant.	:	

**DECLARATION OF JASON DEFRANCESCO IN SUPPORT OF
OPPOSER'S MOTION FOR LEAVE TO AMEND**

Jason DeFrancesco, declares as follows:

1. I am an attorney at law admitted to practice before the courts of the States of New York and Florida and Washington, D.C. My practice is generally limited to intellectual property with emphasis on trademark law and patents.
2. I am an associate of the firm of Baker and Rannells PA. We maintain offices at 575 Route 28, Suite 102, Raritan, New Jersey 08869. The firm represents the Applicant, Janoskians, LLC., in this proceeding and currently moves the Board to grant its motion for leave.
3. I make this declaration in support of Applicant's motion for leave to amend. I have personal knowledge of the facts set forth herein, and if called to testify, could and would testify competently thereto.

Wherefore, I verify the following Exhibits, that,

Exhibit A is a true and correct copy of an excerpt from the website address <<http://lovemygays.com/category/homosociology/>> that I accessed on September 16, 2015. The referenced website provides definitions and or explanations of meaning of terms, under the

reference “Homosociology” identified as the “appreciation and preservation of gay struggles and sensibilityes” (p. 1 of 10). In addition to the several terms provided therefor, p. 5 of 10 provides reference to “The Nasty Pig” as a man who “pushes physical pleasures limits of human possibilities. He ‘literally stretches’ the boundaries and always wants to do the next step...There’s a good chance he has rubber underwear on...” (emphasis added by internal quotes).

Exhibit B is a true and correct copy of an excerpt from the website <<http://www.urbandictionary.com>> that I accessed on September 16, 2015. As provide for on p. 3 of 6, the term “Nasty Pig” is defined as “a gay male who seeks out/participates in ‘out of the norm’ homosexual experiences that usually involve one or a variety of the following acts: Multiple sex partners, unprotected sex, cum dropping, anonymous partners, pissing in orifices...to name a few. You’re a nasty pig Evan, you slept with five guys in one night and let them all cum & piss in your hole! And still wanted more....”

Exhibit C is a true and correct copy of Applicant’s First Request for Production of Documents served on Opposer September 10, 2014. As shown, Applicant requested information and materials from Opposer requesting disclosure of the meaning to “Nasty Pig,” for example as in:

No. 2, which requests, “[a]ll documents concerning Opposer’s investigation, selection, adoption, creation and development of Opposer’s Mark.”

No. 5, which requests, “[a]ll documents documents that supports the claims made by Opposer in the Notice of Opposition.” Which include but are not limited to Opposer’s allegations in Dkt. #1, which Opposer asserts entitlement and right to “Nasty Pig” (Dkt. #1, ¶¶ 10, 11) over Applicant, and that Opposer has built goodwill that uniquely identifies it with “Nasty Pig” for

related goods and services that identify jockstraps, gauntlets, bed sheets, rubber goods and leather harnesses (Dkt. #1, ¶ 6).

No. 9, which requests, “[a]ll United States Patent and Trademark Office trademark search citations and common law search citations discovered during Opposer’s investigations into the availability of Opposer’s Mark.”

No. 16, which requests, “[a]ll All documents which record, refer to, or relate to Opposer’s knowledge and/or awareness of the use and/or registration of third party Variations of Opposer’s Mark for any goods or services in the United States.”

No. 18, which requests, “[a]ll documents concerning any survey, test survey, informal survey, consumer questionnaire, consumer study questionnaire, market analysis, market research, investigation or other inquiry conducted by or on behalf of Opposer or of which Opposer has become aware that refers or relates to Opposer, Opposer’s Marks, Applicant or Applicant’s Mark.”

Exhibit D is a true and correct copy of Opposer’s objections and responses to Applicant’s First Request for Production of Documents dated November 14, 2015. With exception to no. 18 referenced above, wherein Opposer states to not have any responsive documents, it responded that it would “produce non-privileged documents responsive to this request as reasonably construed.” (See Exh. D, response to nos. 2, 5, 9 and 16.)

Exhibit E is a true and correct copy of a deficiency letter sent by the undersigned to counsel for Opposer on September 18, 2015 bring to the attention of Opposer Applicant’s recent discovery as to the meaning of “nasty pig” and requesting discovery be supplemented thereof.

Exhibit F is a true and correct copy of the response to Exh. E, whereby counsel for Opposer took issue with the timing of Applicant’s deficiency letter and denied its discovery is deficient. In particular, counsel notes that “[s]imply because Applicant believes that the term

'nasty pig' has a specific meaning does not mean that Opposer has any documents in its possession regarding that alleged meaning."

Exhibit G is a true and correct copy of public documents provided by Opposer in this proceeding and in support of its response to Applicant's request for production (Exh. D) and bates numbered by Opposer accordingly. Many of the documents identify attractive men, scantily clad, being suggestive. Exh. G additionally includes (No. 002070) a man being objectified as a "Nasty Pig" and an article that that confirms the goals of the Opposer, which "is still (and will always be) about getting costumers laid" (No. 003917).

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed at Raritan, New Jersey
on October 12, 2015.

/Jason DeFrancesco/
Jason DeFrancesco

Decl. DeFrancesco, Exh. A

LOVE my gays

(<http://lovemygays.com/>)

HOME (<http://lovemygays.com/>)

ABOUT (<http://lovemygays.com/about-love-my-gays/>)

ARTICLES (<http://lovemygays.com/category/articles/>)

EYE CANDY (<http://lovemygays.com/category/eye-candy/>)

HOMOSOCIOLOGY (<http://lovemygays.com/category/homosociology/>)

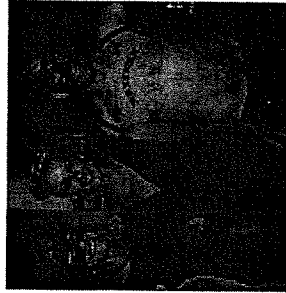
HOMOSOCIOLOGY

Search

Homosociology is the appreciation and preservation of gay struggles and sensibilities.

Tales of the City

(<http://lovemygays.com/2012/11/glbt-historical-society/>)



(<http://lovemygays.com/2012/11/glbt-historical-society/>)

If Manhattan is the city that never sleeps, San Francisco is the city that never ceases to inspire. Just when I think I can't be surprised, or that I couldn't possibly be any more addicted to San Francisco, a new discovery unfolds and my rainbow heart beats faster. Like when I recently happened upon the [...]

RECENT POSTS

Chasing Summer on the Circuit

> (<http://lovemygays.com/2013/08/chasing-summer-on-the-circuit/>)

Keepin' it Real in the Alley

> (<http://lovemygays.com/2013/07/keepin-it-real-in-the-alley/>)

Eye of the Rainbow Tiger

> (<http://lovemygays.com/2013/06/eye-of-the-rainbow-tiger/>)

BeatBox: Pride of SF Parties Turns 2!

> (<http://lovemygays.com/2013/06/beatbox-pride-of-sf-parties-turns-2/>)

REAL BAD: 25 Years of Being Bad and Doing

> Good (<http://lovemygays.com/2013/05/real-bad-xxv/>)

The Queen's English

(<http://lovemygays.com/2012/07/the-queens-english/>)

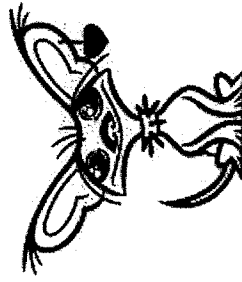


(<http://lovemygays.com/2012/07/the-queens-english/>)

I love the way my gays can turn a phrase. That I speak gay fluently is one of my favorite bragging rights as a self-described homosociologist. My cultural immersion is so complete, I get lost in translation whenever people "give it to me straight," so to speak. Situations that require me to use "proper" parlance [...]

The Tiny Dog

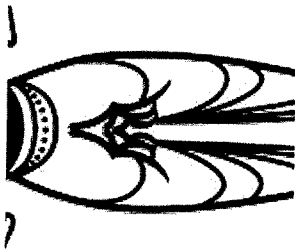
(<http://lovemygays.com/2011/12/the-tiny-dog/>)



(<http://lovemygays.com/2011/12/the-tiny-dog/>)

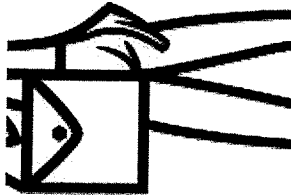
Of course every good gay has a tiny dog!

The Sister of Perpetual Indulgence (<http://lovemygays.com/2011/12/the-sister-of-perpetual-indulgence/>)



(<http://lovemygays.com/2011/12/the-sister-of-perpetual-indulgence/>)
The Sisters are in a class of there own. Through drag and Catholic imagery they call attention to sexual intolerance and satirize issues of gender and morality – and raise tons of money for worthy causes along the way.

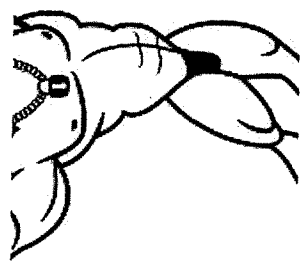
The Twink (<http://lovemygays.com/2011/12/the-twink-2/>)



(<http://lovemygays.com/2011/12/the-twink-2/>)
The Twink, or as we like to call him, the baby gay. Always in something labelled, he is always 'fashion-forward' and fierce. Around every Twink is typically a gaggle of women who would KILL for a straight man to have even an ounce of his looks, wit, and personality.

The Muscle Pig

(<http://lovelygays.com/2011/12/the-muscle-pig/>)

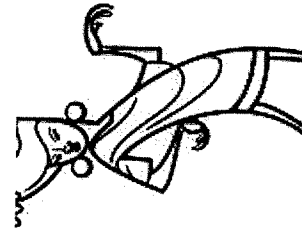


(<http://lovelygays.com/2011/12/the-muscle-pig/>)

The muscle pig achieves levels of physical masculinity that few men, gay or straight, could ever dream of. Yet, they still twirl and giggle and swish just like a proper gay should. It's that juxtaposition that we love about our muscle pigs – that and the fact that you often see them wearing someone's collar-lock.

The Drag Queen

(<http://lovelygays.com/2011/12/the-drag-queen/>)

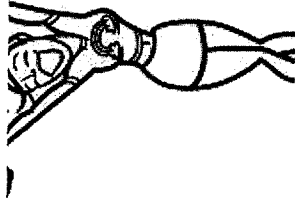


(<http://lovelygays.com/2011/12/the-drag-queen/>)

She elevates 'fabulous' to a level of futuristic grandeur, genderless opulence and sexual bluntness. She creates a new identity through outrageous costumes, heightened attitude and deconstructs gender roles and fashion cliches that the rest of us accept so easily.

The Fag Hag

(<http://lovemygays.com/2011/12/the-fag-hag/>)

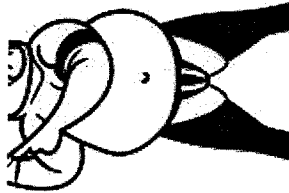


(<http://lovemygays.com/2011/12/the-fag-hag/>)

Artist's Notes: The Fag Hag is a straight girl who loves the gay-community for its openness and sexual playfulness; its compassion and 'let-live' sensibility. Her female perspective enriches the community's direction and opens it up to the rest of society – as her desire is to have a community beyond sexual orientation and gender-rules.

The Nasty Pig

(<http://lovemygays.com/2011/12/the-nasty-pig/>)

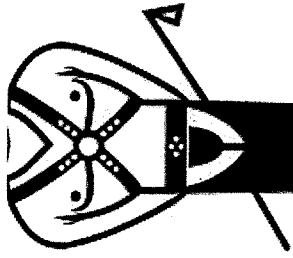


(<http://lovemygays.com/2011/12/the-nasty-pig/>)

Artist's Note: He pushes physical pleasures limits of human possibilities. He literally stretches the boundaries and always wants to do the next step to reach yet another level of sexual bliss. There's a good chance he has rubber underwear on underneath his work clothes.

Leather Daddy

(<http://lovemygays.com/2011/11/leather-daddy/>)

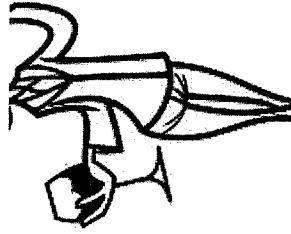


(<http://lovemygays.com/2011/11/leather-daddy/>)

The leather community refers to practices and styles of dress organized around 'kink,' specifically, a homoerotic aesthetic that draws from post World War II biker culture as well as military and police uniform. Leathermen represent a culture within the overall gay community, defined by its history, driven by code, seeking the hypermasculine ideal. Suzan attends Mr. International [...]

The A-Gay

(<http://lovemygays.com/2011/11/the-a-gay/>)



(<http://lovemygays.com/2011/11/the-a-gay/>)

Artist's Note: The A-Gay is successful, fabulous and very particular. He knows what he wants and usually gets it. His success in life connected with his joie-de-vivre is a combination that makes him a social elite with biting wit and divine etiquette.

Trans

(<http://loveygays.com/2011/11/trans/>)

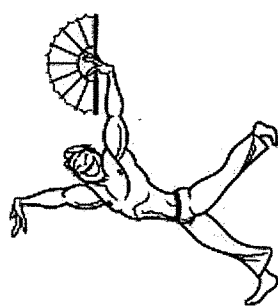


(<http://loveygays.com/2011/11/trans/>)

*Artist's comments: She is very comfortable with who she is and creates a gender between male and female that shows courage and reflection on gender specifics that the rest of us indulge in so much. Her behavior shows that it's us who dress and behave like a gender cliché and her who does the next [...]

The Circuit Queen

(<http://loveygays.com/2011/11/the-circuit-boy/>)

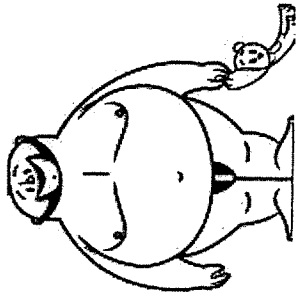


(<http://loveygays.com/2011/11/the-circuit-boy/>)

The circuit has a long history of making room in our busy, stressful lives for full self-expression and total freedom. As silly and shallow as it might seem to the uninitiated, the community of acceptance and belonging that releases itself under the disco ball refreshes and recharges. Read about Suzan's addiction to 'the circuit.' A [...]

The Bear

(<http://lovemygays.com/2011/11/the-bear/>)



(<http://lovemygays.com/2011/11/the-bear/>)

Artist's notes: Being physically on the larger side of life and being equipped with a furry shell, he makes his imposing physicality into a life-style. He is the one that shows us all that being yourself is perfect exactly the way you are. Accepting yourself and loving it! His self-confidence is often enticing and people [...]

Loving Your Gays: Are You an Addict?
(<http://lovemygays.com/2011/05/loving-your-gays-are-you-an-addict/>)

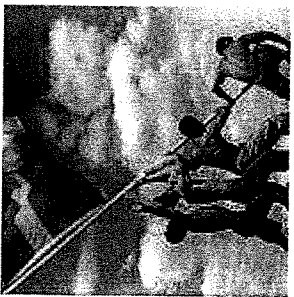


(<http://lovemygays.com/2011/05/loving-your-gays-are-you-an-addict/>)

Are you addicted to Loving Your Gays? Are you gay even when no one is watching? If you've completely lost touch with all things straight (not that there's anything wrong with that!), here's 12 tried-and-true steps to recovery: 1) Admit that you are powerless over your addiction – that your glittery life has become unmanageable [...]

Signs & Symbols

[\(http://lovelygays.com/2011/05/signs-symbols/\)](http://lovelygays.com/2011/05/signs-symbols/)

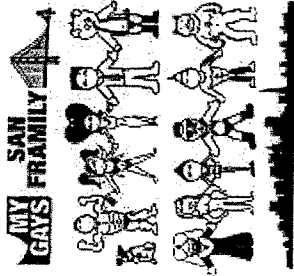


[\(http://lovelygays.com/2011/05/signs-symbols/\)](http://lovelygays.com/2011/05/signs-symbols/)

As gay culture evolves and become ever more mainstream, it's easy to lose perspective. Modern gay culture is evolving so quickly and (natch) so dramatically, we sometimes overlook the homo history in the making. While today there's a broad (and fabulous!) gay lexicon of nonstandard terms and references, there was a time when [...]

San Framily

[\(http://lovelygays.com/2011/05/san-framily/\)](http://lovelygays.com/2011/05/san-framily/)



[\(http://lovelygays.com/2011/05/san-framily/\)](http://lovelygays.com/2011/05/san-framily/)

Variation/combination of "San Francisco" and "family" Refers to the family one chooses for one's self, a common phenomenon experienced by residents of San Francisco, the freedom capital of the world, where self-expression and hedonism rule the land. Also refers to the gayborhood of San Francisco.

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(<http://twitter.com/Guyz4uReview>)



(<https://www.facebook.com/groups/112727305424382/>)

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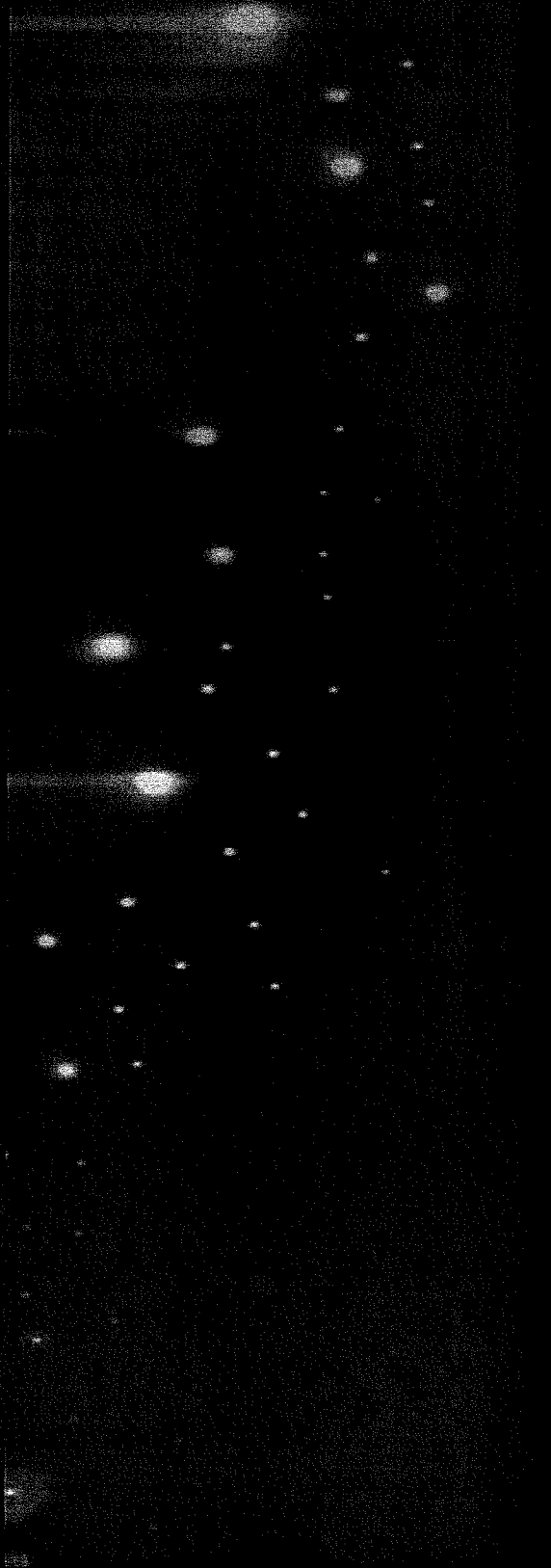
[Mr. Friendly](http://www.mfriendly.info/) (<http://www.mfriendly.info/>)

[PLAY I Dance](http://www.playdance.com/) (<http://www.playdance.com/>)

[Powerhouse](http://www.powerhouse-sf.com/index.html) (<http://www.powerhouse-sf.com/index.html>)

[Project Inform](http://www.projectinform.org/) (<http://www.projectinform.org/>)

[The Juice Box](http://www.juicyfruitfilm.com) (<http://www.juicyfruitfilm.com>)



Decl. DeFrancesco,
Exh. B

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Top Definition

nasty pig

Urban Dictionary: nasty pig
a gay male who seeks out/participates in "out of the norm" homosexual sexual experiences that usually involve one or a variety of the following acts: Multiple sex partners, unprotected sex, cum dumping,anonymous partners,pissing in orifices...to name a few
You're a nasty pig Evan, you slept with five guys in one night and let them all cum & piss in your hole! And still wanted more...
by Sully88 January 03, 2009

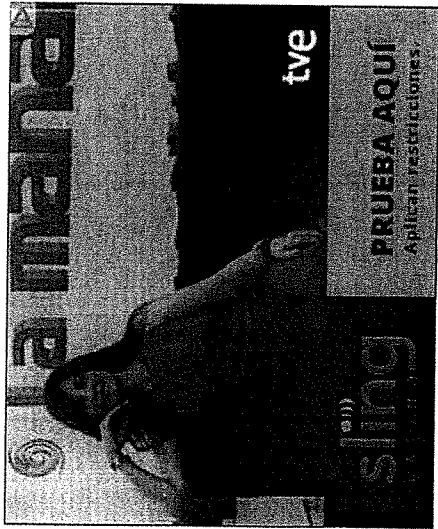
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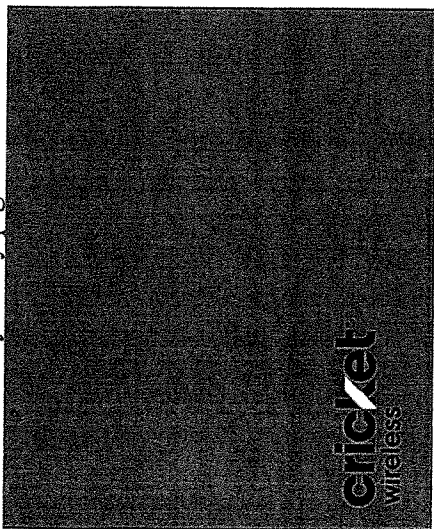
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Random Word

10 Words related to nasty pig

- cochinadas
- dirt
- filth
- gay
- homosexual
- mess
- nasty
- orgy
- pig
- sexually loose





Ten Words Trending Now

- netfix and chill
- bae
- bye felicia
- on fleek
- senpai
- trap queen
- cunt
- pegging
- 1738
- ratchet

- nasty nose syndrome
- Nasty Nunez
- Nasty Nuster
- nasty nut
- Nasty Obama
- Nasty old coon
- nasty olive
- nasty oyster
- nasty panties
- Nasty Parmesan
- nasty pasnits
- Nasty Pasty
- nasty patch
- Nasty Pet
- Nasty Phat
- nasty pig
- nasty pinata
- Nasty Pirate
- Nasty Pistachio
- Nasty pussy
- Nasty Ramirez
- nasty ranchero
- Nasty randy
- Nasty Raul
- nasty redneck
- Nasty Refrigerator
- nasty repeater
- Nasty Ride
- Nasty Roman
- Nasty Rooster
- Nasty Ryan
- Nasty Salad
- Nasty Sanchez
- nasty santa
- nasty sauce
- NASTY SHASTRI
- nasty shepard
- nasty shit
- Nastysick
- Nasty Skaggins
- nastysmash

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Decl. DeFrancesco,
Exh. C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re: Serial No. 86/085,785
Filing Date: October 8, 2013
Mark: DIRTY PIG

NASTY PIG, INC.)	
)	
Opposer,)	
)	
v.)	Opposition No. 91217154
)	
JANOSKIANS LLC,)	
)	
Applicant.)	

**APPLICANT'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS**

Applicant, JANOSKIANS LLC ("Applicant"), pursuant to Rule 2.120 of the Trademark Rules of Practice, and Rule 34 of the Federal Rules of Civil Procedure, hereby requests NASTY PIG, INC. ("Opposer") to produce and permit Applicant to inspect and copy the following documents and things, at the offices of Baker and Rannells, PA, 575 Route 28, Suite 102, Raritan, NJ 08869, or at some other location mutually agreed upon, within (30) thirty days after receipt hereof, as identified according to following definitions and instructions.

DEFINITIONS AND INSTRUCTIONS

1. As used herein, the term "Opposer" means and refers to Opposer herein, each of its predecessors, subsidiaries, licensees, divisions, affiliates, directors, officers, employees, agents and attorneys and each person acting on its behalf or under its control.

2. As used herein, the term "Applicant" means and shall refer to Applicant herein, each of its predecessors, subsidiaries, licensees, divisions, affiliates, directors, officers, employees, agents and attorneys and each person acting on its behalf or under its control.

3. As used herein, the term "Person" as well as pronouns referring thereto shall include any business, legal or governmental entity or association, as well as natural persons.

4. As used herein, the term "Document" includes any tangible thing from or on which information can be stored, recorded, processed, transmitted, inscribed, or memorialized in any way by any means, regardless of technology or form.

5. With respect to each Document to which an objection as to production is made, state:

- a. The nature of the Document;
- b. The date of the Document;
- c. The name of the person(s) to whom the Document was addressed;
- d. The name of the person(s) who received such Document;
- e. The name of the person(s) who prepared or sent the Document;
- f. The general subject matter of the Document; and
- g. The specific grounds upon which the objection is made.

6. As used herein, the term "date" means the exact date, if known, and, if not known, the approximate date.

7. Any word written in the singular shall be construed as plural or vice-versa when necessary to facilitate a response to a request for production of a document or thing.

8. As used herein, the term “all” and “each” shall be construed as all and each to bring within the scope of the discovery request all documents and things that might otherwise be construed to be outside of its scope.

9. As used herein, the connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all documents and things that might otherwise be construed to be outside of its scope.

10. “Refer,” “relate” or “relating,” “regarding,” “concerning,” “reflecting” or “containing” shall mean directly or indirectly, in whole or in part, referring to, relating to, connected with, commenting on, discussing, impacting upon, affecting, responding to, explaining, showing, indicating, describing, analyzing, reflecting, evidencing or constituting.

11. As used herein, the term “Applicant’s Mark” means and shall refer to the Applicant’s mark DIRTY PIG, Application Serial No. 86085785.

12. As used herein, “Applicant’s Goods” shall mean the goods identified in application Ser. No. 86085785

13. As used herein, the term “Opposer’s Mark” means and shall refer to NASTY PIG, the mark which is the subject of Registration No. 2800386 and pending application Ser. No.: 86114145.

14. As used herein, “Opposer’s Goods” shall mean the goods set forth in Registration No. 2800386 and pending application Ser. No.: 86114145.

15. As used herein, Variations of Opposer’s Mark shall mean any third party mark comprised in whole or in part of “NASTY” or “PIG” or any of the following:

SOW

SWINE

BOAR

RAUNCHY

PIG PEN

BAD

ANGRY

PHILTHY

TRAIFF

CHEATING

STINKY

STY

SLOPPY

WILD

REQUESTED DOCUMENTS AND THINGS

1. All documents identified in response to Applicant's First Set of Interrogatories.
2. All documents concerning Opposer's investigation, selection, adoption, creation and development of Opposer's Mark.
3. All documents concerning the prosecution, maintenance and assignment of Opposer's Mark, the subject of Registration No. 2800386, and any goodwill associated therewith.

4. All documents tending to demonstrate Opposer's bona fide intent to use Opposer's Mark on the goods which are identified pending application Ser. No.: 86114145.

5. All documents that supports the claims made by Opposer in the Notice of Opposition.

6. All documents which evidence Opposer's continued use of Opposer's Mark on Opposer's Goods in the United States from Opposer's first use date through the present in the United States.

7. All documents evidencing Opposer's date of first actual use of Opposer's Mark on Opposer's Goods.

8. A specimen or photograph of each of Opposer's Goods, including the packaging for the same, that has been, is being, or will be sold or offered using Opposer Mark from Opposer's first use date through the present in the United States.

9. All United States Patent and Trademark Office trademark search citations and common law search citations discovered during Opposer's investigations into the availability of Opposer's Mark.

10. All invoices, contracts, agreements, purchase orders, and/or purchase receipts which reflect or evidence Opposer's offering of Opposer's Goods featuring Opposer's Mark in the United States from Opposer's first use date through the present in the United States.

11. All sales reports which record, refer to, or relate to, Opposer's sales of Opposer's Goods under Opposer's Mark in the United States from Opposer's first use date through the present in the United States.

12. All documents which record, refer to, or relate to Opposer's advertising and/or promotional expenditures for Opposer's Goods under Opposer's Mark from Opposer's first use date through the present in the United States. including, without limitation, the advertising medium, the dates of any such advertisements or promotions, and the cost associated with such advertisements and/or promotions.

13. All promotional materials, media plans, marketing plans and advertisements evidencing Opposer's use of Opposer's Mark on or in association with Opposer's Goods from Opposer's first use date through the present in the United States.

14. All documents concerning business plans for Opposer's Goods associated with Opposer's Mark in the United States from Opposer's first use date through the present in the United States.

15. All documents which refer to, or relate to, Opposer's knowledge and/or awareness of the use by Applicant of Applicant's Mark on or in connection with Applicant's Goods.

16. All documents which record, refer to, or relate to Opposer's knowledge and/or awareness of the use and/or registration of third party Variations of Opposer's Mark for any goods or services in the United States.

17. All documents which record, refer to, or relate to Opposer's knowledge and/or awareness of the use and/or registration of third party Variations of Opposer's Mark for any goods or services which have priority over Opposer's Mark in the United States.

18. All documents concerning any survey, test survey, informal survey, consumer questionnaire, consumer study questionnaire, market analysis, market research, investigation or other inquiry conducted by or on behalf of Opposer or of which Opposer

has become aware that refers or relates to Opposer, Opposer's Marks, Applicant or Applicant's Mark.

19. All documents concerning the geographic areas in which Opposer's Goods featuring Opposer's Marks are offered for sale or sold, or intended to be offered for sale or sold in the United States.

20. All agreements, licenses, contracts, consents to use, correspondence or other documents concerning or authorizing use of Opposer's Marks or Variations of Opposer's Marks by a third party.

21. All documents concerning or identifying the customers to whom Opposer's Goods are promoted or to whom Opposer intends to promote Opposer's Services.

22. All documents concerning purchasers or intended purchasers or users of Opposer's Goods offered in association with Opposer's Marks.

23. All documents concerning Opposer's total sales on an annual basis since 2010 of Opposer's Goods featuring Opposer's Marks in the United States.

24. All documents concerning Opposer's gross income derived on an annual basis since 2010 from the sale of Opposer's Goods featuring Opposer's Mark in the United States.

25. Copies of all newspaper, magazine, newsletters, trade journal and other articles concerning Opposer's Goods.

26. Copies of all advertisements, press releases, brochures, catalogs, newspapers, magazine and trade articles, and other promotional materials or drafts thereof containing or bearing Opposer's Marks or used or intended to be used to promote Opposer's Goods in the United States.

27. All documents referring to any trade shows in which Opposer's Goods featuring Opposer's Marks were advertised and promoted.

28. All documents concerning any demand letters, administrative proceeding, or civil actions in the U.S. involving Opposer's Marks and/or Variations of Opposer's Mark.

29. All documents in Opposer's possession or control that refer or relate to Applicant or Applicant's Mark.

30. Each document which concerns any experts who has been retained or specially employed by Opposer and any facts known or opinions held by any such experts regarding any aspect of this proceeding.

31. All statements, opinions and/or reports of any expert obtained by Opposer or any person acting for or on behalf of Opposer regarding any of the issues in this opposition proceeding.

32. For each expert whose opinion may be relied upon in this proceeding, produce each document which concerns: (i) any opinions that may be presented at trial; (ii) the reasons for any such opinions; (iii) any data or information considered by the witness in forming the opinions; (iv) any exhibits used in support of or summarizing the opinions; (v) the compensation being paid to the witness, and (vi) any cases which the witness has testified at trial or by deposition.

33. All documents concerning each instance in which any person has been in any way confused, mistaken or deceived as to the origin or sponsorship of any product or service which is sold or offered for sale by or on behalf of Opposer using Opposer's Marks.

34. All documents concerning any communications between Opposer, on the one hand, and any individual or entity, on the other hand, concerning Applicant, Applicant's Mark, and/or Opposer's Marks.

35. All documents that refer or relate to correspondence between Opposer and Applicant without limitation.

36. All documents that refer or relate to the management and protection of the Opposer's Marks, including watch notices received by Opposer.

37. All documents that refer or relate to efforts and investment in the growth of consumer recognition of the Opposer's Marks.

38. All documents that refer or relate to the typical consumers of goods offered under the Opposer's Mark.

39. All documents that refer or relate to the meaning of NASTY.

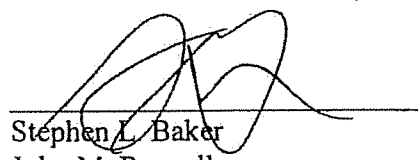
40. All documents that refer or relate to the meaning of DIRTY.

41. All documents, other than those produced to any of the foregoing requests, upon which Opposer intends to rely in connection with this opposition proceeding.

Dated: September 10, 2014

BAKER AND RANNELLS, PA

By:

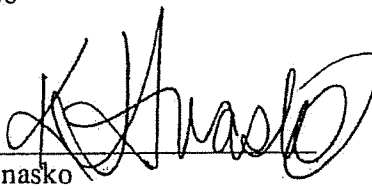


Stephen L. Baker
John M. Rannells
Attorneys for Applicant
575 Route 28, Suite 102
Raritan, New Jersey 08869
(908) 722-5640

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing was served on Opposer by first class mail this 10th day of September 2014:

Joel Kami Schmidt
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the Americas
New York, NY 10036



Kelly Hnasko

Decl. DeFrancesco, Exh. D

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 86/085,785

Filed: October 8, 2013

For Mark: DIRTY PIG

Published in the Official Gazette of March 4, 2014

-----		X	
NASTY PIG, INC.,		:	Opposition No. 91217154
	Opposer,	:	
v.		:	
JANOSKIANS LLC,		:	
	Applicant.	:	
-----		X	

**OPPOSER'S OBJECTIONS AND RESPONSES TO APPLICANT'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and 37 C.F.R. §2.120,
Opposer Nasty Pig, Inc. ("Opposer") hereby responds to Applicant Janoskians, LLC's
("Applicant") First Request for Production of Documents as follows:

GENERAL OBJECTIONS TO ALL REQUESTS

- A. Opposer objects to the definition of "Opposer" on the ground that it improperly encompasses Opposer's attorneys.
- B. Opposer objects to all requests to the extent they purport to require the production of documents that are subject to the attorney-client privilege, the attorney's work product privilege or any other applicable privilege or immunity on the ground that such discovery is impermissible under Rule 26(b) of the Federal Rules of Civil Procedure. None of Opposer's specific responses shall be construed to mean that Opposer intends to produce privileged

documents in the absence of an intentional waiver. Any inadvertent production of privileged documents shall not constitute a waiver of an otherwise valid claim of privilege, and any failure to assert a privilege as to certain documents shall not be deemed to constitute a waiver of the privilege as to any other documents so protected.

C. Opposer objects to all requests to the extent they seek disclosure of confidential or proprietary technical, commercial, financial/economic or business information or trade secrets. Such information or documents containing or comprising such information will only be provided in accordance with the terms of the Board's standard protective order applicable to this case.

D. Opposer objects to all requests insofar as they purport to require the production of documents outside its possession, custody or control.

E. Where Opposer's responses indicate that it will produce documents responsive to a particular request, such documents will only be produced to the extent there are in fact responsive documents in Opposer's possession, custody or control. Nothing in any of Opposer's responses to specific document requests shall be construed to make any representation or statement as to the existence of any documents responsive to any particular request.

F. Opposer states that it has made a good faith effort to respond to the requests, but reserves the right to produce any additional documents that might be located at any future time.

G. Without waiving these general objections and the additional objections set forth below in response to specific requests, Opposer responds, subject to these objections, as set forth below.

RESPONSES TO REQUESTS

REQUEST FOR PRODUCTION NO. 1:

All documents identified in response to Applicant's First Set of Interrogatories.

RESPONSE TO REQUEST NO. 1:

Opposer will produce non-privileged documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 2:

All documents concerning Opposer's investigation, selection, adoption, creation and development of Opposer's Mark.

RESPONSE TO REQUEST NO. 2:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed, to the extent such documents are available.

REQUEST FOR PRODUCTION NO. 3:

All documents concerning the prosecution, maintenance and assignment of Opposer's Mark, the subject of Registration No. 2800386, and any goodwill associated therewith.

RESPONSE TO REQUEST NO. 3:

Opposer objects to this request on the grounds that it is overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it seeks documents which are publicly available. Opposer also objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or any other applicable privilege

or immunity. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 4:

All documents tending to demonstrate Opposer's bona fide intent to use Opposer's Mark on the goods which are identified [in?] pending application Ser. No.: 86114145.

RESPONSE TO REQUEST NO. 4:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request on the ground that only the Class 18 goods subject to Opposer's Application Ser. No. 86/114,145 were filed on an intent-to-use basis. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 5:

All documents that supports the claims made by Opposer in the Notice of Opposition.

RESPONSE TO REQUEST NO. 5:

Opposer objects to this request to the extent it calls for a legal conclusion. Opposer further objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or any other applicable privilege or immunity. Opposer also objects to this request as premature since this proceeding is in its infancy and discovery is ongoing. Opposer further objects to this request to the extent it seeks production of documents that are publicly available and/or equally accessible to Applicant. Subject to and without waiving the foregoing

objections, Opposer will produce non-privileged documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 6:

All documents which evidence Opposer's continued use of Opposer's Mark on Opposer's Goods in the United States from Opposer's first use date through the present in the United States.

RESPONSE TO REQUEST NO. 6:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed, to the extent such documents are available.

REQUEST FOR PRODUCTION NO. 7:

All documents evidencing Opposer's date of first actual use of Opposer's Mark on Opposer's Goods.

RESPONSE TO REQUEST NO. 7:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed, to the extent such documents are available.

REQUEST FOR PRODUCTION NO. 8:

A specimen or photograph of each of Opposer's Goods, including the packaging for the same, that has been, is being, or will be sold or offered using Opposer Mark from Opposer's first use date through the present in the United States.

RESPONSE TO REQUEST NO. 8:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 9:

All United States Patent and Trademark Office trademark search citations and common law search citations discovered during Opposer's investigations into the availability of Opposer's Mark.

RESPONSE TO REQUEST NO. 9:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Opposer further objects to this request to the extent it seeks documents which are protected by the attorney-client privilege and/or attorney work product privilege. Subject to and without waiving the foregoing objections, Opposer states that there are no documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 10:

All invoices, contracts, agreements, purchase orders, and/or purchase receipts which reflect or evidence Opposer's offering of Opposer's Goods featuring Opposer's Mark in the United States from Opposer's first use date through the present in the United States.

RESPONSE TO REQUEST NO. 10:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago.

REQUEST FOR PRODUCTION NO. 11:

All sales reports which record, refer to, or relate to, Opposer's sales of Opposer's Goods under Opposer's Mark in the United States from Opposer's first use date through the present in the United States.

RESPONSE TO REQUEST NO. 11:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Subject to and without waiving the foregoing objections, Opposer will produce documents sufficient to show Opposer's annual sales of its goods bearing the NASTY PIG mark from 2010 through the present.

REQUEST FOR PRODUCTION NO. 12:

All documents which record, refer to, or relate to Opposer's advertising and/or promotional expenditures for Opposer's Goods under Opposer's Mark from Opposer's first use date through the present in the United States, including, without limitation, the advertising medium, the dates of any such advertisements or promotions, and the cost associated with such advertisements and/or promotions.

RESPONSE TO REQUEST NO. 12:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Subject to and without waiving the foregoing objections, Opposer will produce documents sufficient to show Opposer's annual advertising and/or promotional expenditures incurred in connection with the sale of Opposer's goods bearing the NASTY PIG mark from 2010 through the present.

REQUEST FOR PRODUCTION NO. 13:

All promotional materials, media plans, marketing plans and advertisements evidencing Opposer's use of Opposer's Mark on or in association with Opposer's Goods from Opposer's first use date through the present in the United States.

RESPONSE TO REQUEST NO. 13:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Opposer further objects to this request to the extent it seeks production of documents that are publicly available and/or equally accessible to Applicant. Subject to and without waiving the foregoing objections, Opposer will produce representative documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 14:

All documents concerning business plans for Opposer's Goods associated with Opposer's Mark in the United States from Opposer's first use date through the present in the United States.

RESPONSE TO REQUEST NO. 14:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 15:

All documents which refer to, or relate to, Opposer's knowledge and/or awareness of the use by Applicant of Applicant's Mark on or in connection with Applicant's Goods.

RESPONSE TO REQUEST NO. 15:

Opposer objects to this request to the extent it seeks documents which are protected by the attorney-client privilege and/or attorney work product privilege. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 16:

All documents which record, refer to, or relate to Opposer's knowledge and/or awareness of the use and/or registration of third party Variations of Opposer's Mark for any goods or services in the United States.

RESPONSE TO REQUEST NO. 16:

Opposer objects to this request on the grounds that it seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer also objects to this request to the extent it seeks documents that are not within Opposer's possession, custody or control. Opposer further objects to this request to the extent it

seeks production of documents that are publicly available and/or equally accessible to Applicant. Opposer also objects to this request to the extent it seeks documents which are protected by the attorney-client privilege and/or attorney work product privilege. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 17:

All documents which record, refer to, or relate to Opposer's knowledge and/or awareness of the use and/or registration of third party Variations of Opposer's Mark for any goods or services which have priority over Opposer's Mark in the United States.

RESPONSE TO REQUEST NO. 17:

Opposer objects to this request on the grounds that it seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer also objects to this request to the extent it seeks documents that are not within Opposer's possession, custody or control. Opposer further objects to this request to the extent it seeks production of documents that are publicly available and/or equally accessible to Applicant. Opposer also objects to this request as duplicative of Request No. 16. Opposer further objects to this request to the extent it seeks documents which are protected by the attorney-client privilege and/or attorney work product privilege. Subject to and without waiving the foregoing objections, Opposer states that it has no documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 18:

All documents concerning any survey, test survey, informal survey, consumer questionnaire, consumer study questionnaire, market analysis, market research, investigation or other inquiry conducted by or on behalf of Opposer or of which Opposer has become aware that refers or relates to Opposer, Opposer's Marks, Applicant or Applicant's Mark.

RESPONSE TO REQUEST NO. 18:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request on the ground that it improperly seeks documents that are the subject of expert disclosures. Subject to and without waiving the foregoing objections, Opposer states that it has no documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 19:

All documents concerning the geographic areas in which Opposer's Goods featuring Opposer's Marks are offered for sale or sold, or intended to be offered for sale or sold in the United States.

RESPONSE TO REQUEST NO. 19:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 20:

All agreements, licenses, contracts, consents to use, correspondence or other documents concerning or authorizing use of Opposer's Marks or Variations of Opposer's Marks by a third party.

RESPONSE TO REQUEST NO. 20:

Opposer objects to this request as overly broad and unduly burdensome. Opposer further objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or

any other applicable privilege or immunity. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 21:

All documents concerning or identifying the customers to whom Opposer's Goods are promoted or to whom Opposer intends to promote Opposer's Services.

RESPONSE TO REQUEST NO. 21:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 22:

All documents concerning purchasers or intended purchasers or users of Opposer's Goods offered in association with Opposer's Marks.

RESPONSE TO REQUEST NO. 22:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request as duplicative of Request No. 21. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 23:

All documents concerning Opposer's total sales on an annual basis since 2010 of Opposer's Goods featuring Opposer's Marks in the United States.

RESPONSE TO REQUEST NO. 23:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request as duplicative of Request No. 11. Subject to and without waiving the foregoing objections, Opposer will produce documents sufficient to show Opposer's annual sales of its goods bearing the NASTY PIG mark from 2010 through the present.

REQUEST FOR PRODUCTION NO. 24:

All documents concerning Opposer's gross income derived on an annual basis since 2010 from the sale of Opposer's Goods featuring Opposer's Mark in the United States.

RESPONSE TO REQUEST NO. 24:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request as duplicative of Request Nos. 11 and 23. Subject to and without waiving the foregoing objections, Opposer will produce documents sufficient to show Opposer's annual sales of its goods bearing the NASTY PIG mark from 2010 through the present.

REQUEST FOR PRODUCTION NO. 25:

Copies of all newspaper, magazine, newsletters, trade journal and other articles concerning Opposer's Goods.

RESPONSE TO REQUEST NO. 25:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Subject to and without waiving the foregoing objections, Opposer will produce representative documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 26:

Copies of all advertisements, press releases, brochures, catalogs, newspapers, magazine and trade articles, and other promotional materials or drafts thereof containing or bearing Opposer's Marks or used or intended to be used to promote Opposer's Goods in the United States.

RESPONSE TO REQUEST NO. 26:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Opposer further objects to this request as duplicative of Request No. 25. Subject to and without waiving the foregoing objections, Opposer will produce representative documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 27:

All documents referring to any trade shows in which Opposer's Goods featuring Opposer's Marks were advertised and promoted.

RESPONSE TO REQUEST NO. 27:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, particularly inasmuch as Opposer first adopted its NASTY PIG mark nearly twenty years ago. Subject to and without waiving the foregoing objections, Opposer states that it has no documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 28:

All documents concerning any demand letters, administrative proceeding, or civil actions in the U.S. involving Opposer's Marks and/or Variations of Opposer's Mark.

RESPONSE TO REQUEST NO. 28:

Opposer objects to this request as overly broad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 29:

All documents in Opposer's possession or control that refer or relate to Applicant or Applicant's Mark.

RESPONSE TO REQUEST NO. 29:

Opposer objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense

privileges, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 30:

Each document which concerns any experts who has been retained or specially employed by Opposer and any facts known or opinions held by any such experts regarding any aspect of this proceeding.

RESPONSE TO REQUEST NO. 30:

Opposer objects to this request on the ground that it is premature and improper under the Board's rules. *See, e.g.,* TBMP § 401.03; *General Council of the Assemblies of God v. Heritage Music Foundation*, 97 U.S.P.Q.2d 1890, 1893 (T.T.A.B. 2011). Subject to and without waiving the foregoing objections, Opposer states that it has not made any determination as of this time as to the expert witnesses, if any, from whom it will elicit expert testimony. Opposer will provide disclosures regarding potential expert witnesses in accordance with Federal Rule 26 and the Board's rules governing expert disclosures.

REQUEST FOR PRODUCTION NO. 31:

All statements, opinions and/or reports of any expert obtained by Opposer or any person acting for or on behalf of Opposer regarding any of the issues in this opposition proceeding.

RESPONSE TO REQUEST NO. 31:

Opposer objects to this request on the ground that it is premature and improper under the Board's rules. *See, e.g.,* TBMP § 401.03; *General Council of the Assemblies of God v. Heritage Music Foundation*, 97 U.S.P.Q.2d 1890, 1893 (T.T.A.B. 2011). Opposer further objects to this request to the extent it seeks documents and/or information protected from discovery under

Federal Rule 26. Subject to and without waiving the foregoing objections, Opposer states that it has not made any determination as of this time as to the expert witnesses, if any, from whom it will elicit expert testimony. Opposer will provide disclosures regarding potential expert witnesses in accordance with Federal Rule 26 and the Board's rules governing expert disclosures.

REQUEST FOR PRODUCTION NO. 32:

For each expert whose opinion may be relied upon in this proceeding, produce each document which concerns: (i) any opinions that may be presented at trial; (ii) the reasons for any such opinions; (iii) any data or information considered by the witness in forming the opinions; (iv) any exhibits used in support of or summarizing the opinions; (v) the compensation being paid to the witness, and (vi) any cases which the witness has testified at trial or by deposition.

RESPONSE TO REQUEST NO. 32:

Opposer objects to this request on the ground that it is premature and improper under the Board's rules. *See, e.g.,* TBMP § 401.03; *General Council of the Assemblies of God v. Heritage Music Foundation*, 97 U.S.P.Q.2d 1890, 1893 (T.T.A.B. 2011). Subject to and without waiving the foregoing objections, Opposer states that it has not made any determination as of this time as to the expert witnesses, if any, from whom it will elicit expert testimony. Opposer will provide disclosures regarding potential expert witnesses in accordance with Federal Rule 26 and the Board's rules governing expert disclosures.

REQUEST FOR PRODUCTION NO. 33:

All documents concerning each instance in which any person has been in any way confused, mistaken or deceived as to the origin or sponsorship of any product or service which is sold or offered for sale by or on behalf of Opposer using Opposer's Marks.

RESPONSE TO REQUEST NO. 33:

Opposer objects to this request to the extent it calls for a legal conclusion. Opposer further objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 34:

All documents concerning any communications between Opposer, on the one hand, and any individual or entity, on the other hand, concerning Applicant, Applicant's Mark, and/or Opposer's Marks.

RESPONSE TO REQUEST NO. 34:

Opposer objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections, Opposer states that it has no non-privileged documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 35:

All documents that refer or relate to correspondence between Opposer and Applicant without limitation.

RESPONSE TO REQUEST NO. 35:

Opposer objects to this request on the grounds that it is vague and ambiguous. Opposer further objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense

privileges, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 36:

All documents that refer or relate to the management and protection of the Opposer's Marks, including watch notices received by Opposer.

RESPONSE TO REQUEST NO. 36:

Opposer objects to this request as overly broad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 37:

All documents that refer or relate to efforts and investment in the growth of consumer recognition of the Opposer's Marks.

RESPONSE TO REQUEST NO. 37:

Opposer objects to this request as overly broad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request as vague and ambiguous. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 38:

All documents that refer or relate to the typical consumers of goods offered under the Opposer's Mark.

RESPONSE TO REQUEST NO. 38:

Opposer objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request as duplicative of Request Nos. 21 and 22. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 39:

All documents that refer or relate to the meaning of NASTY.

RESPONSE TO REQUEST NO. 39:

Opposer objects to this request to the extent it seeks documents that are not within Opposer's possession, custody or control. Opposer also objects to this request as vague and ambiguous. Opposer further objects to this request to the extent it seeks production of documents that are publicly available and/or equally accessible to Applicant. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 40:

All documents that refer or relate to the meaning of DIRTY.

RESPONSE TO REQUEST NO. 40:

Opposer objects to this request to the extent it seeks documents that are not within Opposer's possession, custody or control. Opposer also objects to this request as vague and ambiguous. Opposer further objects to this request to the extent it seeks production of documents that are publicly available and/or equally accessible to Applicant. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 41:

All documents, other than those produced to any of the foregoing requests, upon which Opposer intends to rely in connection with this opposition proceeding.

RESPONSE TO REQUEST NO. 41:

Opposer objects to this request on the grounds that it is vague and ambiguous, overly broad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request as duplicative of Request No. 5. Opposer also objects to this request on the ground that this proceeding is in its infancy and discovery is ongoing. Opposer further objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, work-product doctrine, the common interest and joint defense privileges, and/or any other applicable privilege or immunity. Opposer also objects to this request to the extent it seeks production of documents that are publicly available and/or equally accessible to Applicant. Subject to and without waiving the foregoing objections, Opposer will produce documents responsive to this request as reasonably construed.

Dated: New York, New York
November 14, 2014

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: Scott P. Ceresia

Joel Karni Schmidt
Eric J. Shimanoff
Scott P. Ceresia
1133 Avenue of the Americas
New York, NY 10036-6799
(212) 790-9200

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing OPPOSER'S OBJECTIONS AND RESPONSES TO APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS to be sent via first class, postage paid mail to Applicant's Attorney and Correspondent of Record, Stephen L. Baker, Esq., Baker and Rannells, P.A., 575 Route 28, Raritan, New Jersey 08869-1354.

Dated: New York, New York
November 14, 2014



Scott P. Ceresia

Decl. DeFrancesco, Exh. E



JASON DeFRANCESCO, ESQ.
575 ROUTE 28
RARITAN, NJ 08869
(908) 722-5640
JLD@BR-TMLAW.COM

September 18, 2015

VIA E-MAIL ONLY:

Ceresia, Scott P. <SPC@cjl.com>
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Cowan Liebowitz & Latman PC
1133 Avenue of the Americas
New York, NY 10036

Re: Deficiency letter and **FRE 408 COMMUNICATION**
Opposition No. 91217154; *Nasty Pig, Inc. v Janoskians, LLC*.

Dear Scott,

This letter is to notify you of deficiencies in your discovery responses to Applicant's Interrogatory Nos. 1-20 and Request for Production Nos. 1-41.

INTERROGATORIES

In answering Nos. 1, 2, 6, 7, 8, 9, 10, 11, 15, 16, 17 and 18 you repeat that *Opposer will produce documents pursuant to Fed. R. Civ. P. 33(d)* and with exception to nos. 1, 2, 6 and 7 condition this on a *reasonable construction*. Seeing as you have not defined the construction, any reasonableness is rejected. Further, all answers are not responsive because you have not properly invoked Rule 33. See *No Fear, Inc. v. Rule*, 2000 TTAB LEXIS 217, 8-9 (Trademark Trial & App. Bd. Mar. 30, 2000)

A party responding to an interrogatory by producing business records [or, as in this case, by agreeing to produce them] must identify documents which the responding party knows to contain the responsive information, and may not merely agree to provide access to a voluminous collection of records which may contain the responsive information. See Baicker-Mckee, Janssen & Corr, Federal Civil Rules Handbook (1997) at 442-443. In addition, a party may not rely on the option to produce business records unless it can establish that providing written responses would impose a significant burden on the party. Further, even if the responding party can meet this test and can identify particular documents in which the inquiring party [*9] will find its answers, the inquiring party must not be left with any greater burden than the responding party when searching through and inspecting the records. Often, this requirement will not be met, because the responding party will have greater familiarity with its own records and will generally have a lesser burden than the inquiring party when searching

through the relevant records. See, generally, in regard to these propositions, 8A Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d § 2178 (2d ed. 1994). Reference also is made to the Board's thorough discussion of the issues involved in application of Fed. R.Civ. P. 33(d) in D.K. Jain d/b/a Luxor Pen Company v. Ramparts, Inc., 49 USPQ2d 1429 (TTAB 1998).

Please update *all* answers accordingly.

With specific regards to Interrogatory No. 5, you were asked to specify each Media. Please refer to the definition at paragraph no. 18 in the propounded interrogatories and provide a proper answer. (The notion that the interrogatory is not relevant is ignored.)

Regarding No. 12, Applicant requests you identify Watch Notices that reference your client's mark and variations, and identify actions taken by your client. The answer that the information is not relevant, unduly burdensome or privileged is far-fetched. The information is not overly broad or not relevant because this concerns your clients asserted mark, which your client has a duty to police, and if not, it loses right to do so. And, seeing as the other parties your client would have taken action on are adverse, there is no privilege. If you believe privilege exists, please provide a privilege log. If the request is unduly burdensome, please at least provide the number of actions your client has taken and we can ask the Board to decide if it is a burden.

Regarding No. 14, Applicant requests you identify individuals that participated in searches for Opposer's Mark. The answer that "there are no individuals responsive to this interrogatory as reasonably construed" is not responsive. Without explaining how you "construed" the interrogatory, it is denied that it was reasonable. If your client did not attend to any search then state so. Otherwise explain your construction.

Furthermore, you asserted privilege in response to Nos. 10, 12, 15, 16 and 17 but have not provided a privilege log. Kindly identify the documents subject to privilege.

PRODUCTION REQUESTS

In response to request Nos. 1-9, 13-22, 25-29, and 33-41 you stated that *Opposer will produce non-privileged documents responsive to this request as reasonably construed*. As previously noted above, without any explanation as to your construction, the suggestion that it is "reasonable" is without merit. Please explain how you have construed the request, and because you assert privilege, please identify those documents in a privilege log.

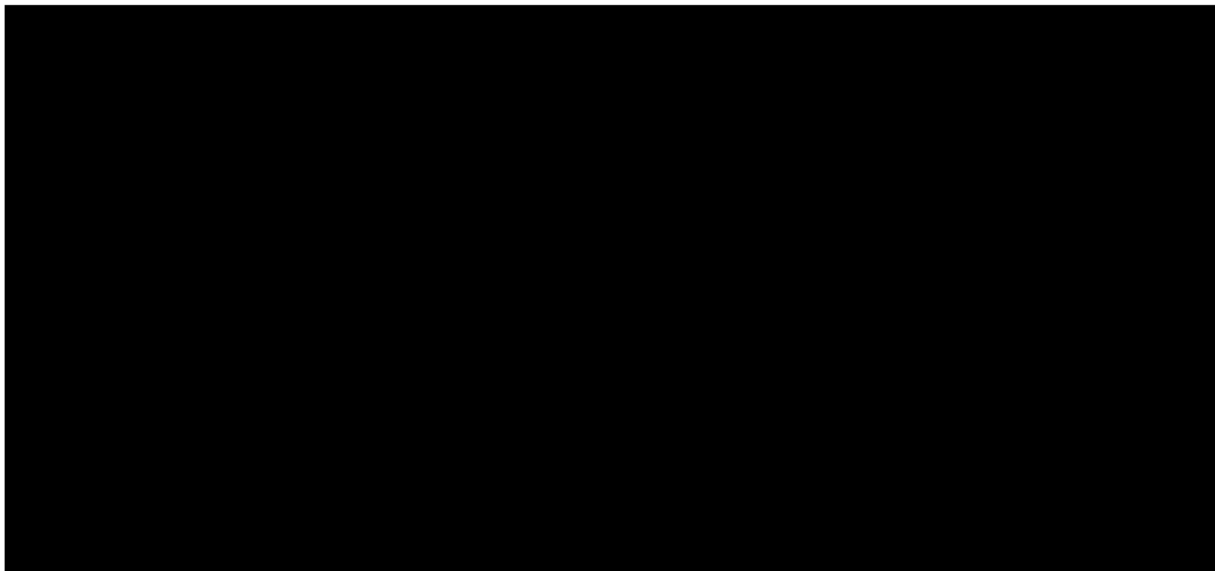
With specific regards to request no. 1, your response is incomplete and evasive as it uses the same answer that was used in the answer to interrogatory nos. 8, 9, 10, 11, 15, 16, 17 and 18. Furthermore, it is unknown how you have construed interrogatory nos. 1-20. Considering that this is your response, you are required to explain your construction of every interrogatory.

Regarding No. 2, you were asked for materials regarding the selection, adoption and creation of Opposer's mark NASTY PIG. It is not believed that documents have been provided. In particular, it has recently come to our attention that there is meaning in the term "nasty pig" that is rather specific to your client's market. Your client would have had knowledge of "nasty pig" twenty years ago, so its inability to use reasonable efforts to get responsive documents is not believable. This requested information is likewise responsive to request no. 5.

Regarding Nos. 8, 10, 11, 12, 13, 14, 25, 26, 27 you were asked to provide information that includes proof of your client's first use of goods under its mark. The statement that the Opposer first adopted its mark nearly 20 years ago is not responsive. Based on Reg. No. 2800386 your client alleges to have begun use as late as 2001. Reg. No. alleges use as late as 2012. If you are unable to provide proof of first use (that has remained continuous) for certain goods in your asserted marks, please state so and identify the mark and goods.

In light of the fact that your pretrial disclosures are due in less than a month, we would like to have these issues resolved well before then. While I generally think a phone call is appropriate, I would first ask that you respond in writing to first advise of your intentions, for example, if you agree to attend to the deficiencies as listed.

THE FOLLOWING IS SUBJECT TO FRE 408



Very truly yours,



Jason DeFrancesco

Decl. DeFrancesco, Exh. F



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New York, NY 10036

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www.cll.com

Scott P. Ceresia
(212) 790-9247
spc@cll.com

October 6, 2015

Via Email (JLD@br-tmlaw.com)

Jason DeFrancesco, Esq.
Baker and Rannells, P.A.
575 Route 28
Raritan, New Jersey 08869-1354

Re: DIRTY PIG (Opp. No. 91217154)

Dear Jason:

We write in response to your letter, dated September 18, 2015, regarding Opposer Nasty Pig, Inc.'s ("Opposer") responses to Applicant Janoskians LLC's ("Applicant") First Set of Interrogatories and First Set of Requests for Production. We also address separately Applicant's settlement offer made pursuant to Federal Rule of Evidence 408.

At the outset, we note that despite the parties' attempts to reach an agreement concerning testimony in this matter, we never received a response to our September 16th email on the subject. As stated in that email, please confirm whether you intend to take Applicant's testimony and, if so, whether you intend to do so by declaration. Because the trial periods are quickly approaching, please let us know this information by the close of business on **Thursday, October 8, 2015**.

With respect to your letter, as you are aware, we served Opposer's written discovery responses over ten months ago on November 14, 2014, and served Opposer's document production shortly thereafter on December 4, 2014. We thus were surprised to receive your letter in which you raise discovery-related issues for the very first time even though discovery in this matter has already closed and the trial periods are set to commence in just a few weeks. Such substantial and unexplained delay calls into question the sincerity of your objections. With good reason, the TBMP expressly instructs that any motion to compel discovery responses "should be filed *within a reasonable time* after the failure to respond to a request for discovery or after service of the response believed to be inadequate." TBMP § 523.03 (emphasis added). Waiting over ten months to raise these issues is far from a reasonable time.

On the merits, we find your objections to Opposer's discovery responses unfounded, particularly since many of the objections you raise apply with equal force to Applicant's

responses to Opposer's discovery requests. Nonetheless, as a measure of good faith and to avoid any unnecessary motion practice, we respond in detail to the issues raised in your letter.

Opposer's Responses to Applicant's Discovery Requests

As a general matter, Applicant's patently overbroad and unduly burdensome requests seeking "all documents" effectively asked for every paper maintained by Opposer regarding Opposer's NASTY PIG mark which has been in use for 20 years. In a good-faith effort to respond to these requests, Opposer reasonably construed the requests in order to produce all documents that are material to this proceeding. Not only was this fully permissible, but Applicant responded to Opposer's requests in precisely the same way, namely, by also qualifying that it would produce only documents responsive to Opposer's requests "as reasonably construed," without any explanation as to how Applicant construed those requests. (See Applicant's responses to Opposer's Requests for Production Nos. 1-34.) To the extent Applicant believes that any specific documents are missing from Opposer's production, please identify such documents and we will take action to supplement our production where appropriate.

We find baseless your objection to Opposer's response to Interrogatory No. 5. The response specifically identifies the types of media used in the advertising and sale of Opposer's goods and Opposer has also produced documents showing examples of such media. Likewise, Opposer's response to Interrogatory No. 14 stating that there are no individuals responsive to that interrogatory is fully responsive to the interrogatory as posed.

With respect to Interrogatory No. 12, we propose amending our response to include reference to the instant opposition proceeding. We have no further non-privileged information responsive to this interrogatory. Any communications between our firm and Opposer regarding watch notices are privileged and protected from disclosure.

With respect to Opposer's responses to Interrogatories Nos. 10, 12, 15, 16 and 17 and Requests for Production Nos. 1, 3, 5, 15, 16, 20, 28, 29, and 33-36, Opposer objected to those discovery requests only "to the extent" they sought information or documents protected by the attorney-client privilege, work product doctrine or other applicable privilege or immunity. As you are well aware, Applicant asserted a virtually identical privilege objection in its responses to Opposer's discovery requests. (See Applicant's responses to Opposer's Requests for Production Nos. 1, 6, 9, 13, 19-22 and 24-33.) To confirm, we did not withhold any privileged documents responsive to Applicant's requests, apart from internal privileged communications between our client and our law firm regarding, among other things, registration of Opposer's NASTY PIG mark, enforcement of Opposer's NASTY PIG mark and the instant opposition proceeding. Although we believe that producing a privilege log would be unnecessary in these circumstances, we are willing to prepare a privilege log with bulk entries encompassing our communications with our client, provided that Applicant agrees to likewise produce a privilege log encompassing communications between your firm, Applicant and/or any related or affiliated entities including Fitumi LLC and Putnam Accessory Group, Inc.

We have produced all documents in Opposer's possession, custody or control that are responsive to Request No. 2 regarding Opposer's selection, adoption and creation of Opposer's NASTY PIG mark. Simply because Applicant believes that the term "nasty pig" has a specific meaning does not mean that Opposer has any documents in its possession regarding that alleged meaning. Contrary to your contention, there is nothing in the Federal Rules requiring a party to take efforts to obtain responsive documents that are not currently in its possession.

For the record, Applicant's Requests Nos. 8 and 10-14 seek various advertising, marketing and sales documents dating back to Opposer's first use of Opposer's NASTY PIG mark, to which Opposer has produced responsive documents. By stating that such requests seek "proof of [Opposer's] first use of goods under its mark," you are conflating Opposer's obligation to produce responsive documents with the evidentiary matter of establishing priority. In any event, there can be no conceivable dispute that Opposer, who has been selling goods under Opposer's NASTY PIG mark since 1995, has priority over a company whose intent-to-use application to register its mark was filed less than two years ago on October 8, 2013. Opposer has provided more than sufficient documentation of historical use of Opposer's NASTY PIG mark and will also be supplementing the record with Opposer's testimony on this subject in due course.

Finally, with respect to Opposer's citation to Federal Rule 33(d), given the relatively small universe of documents produced in this case, we find incredulous any claim that determining which documents were responsive to particular interrogatories would have been arduous or unduly burdensome for Applicant. Nonetheless, as a measure of good faith, we propose supplementing Opposer's interrogatory responses citing Federal Rule 33(d) with the specific Bates ranges of documents from which information responsive to those interrogatories may be derived.

Opposer is willing in good faith to supplement its discovery responses in accordance with the above, provided Applicant agrees that such supplementation will resolve all of the issues raised in its letter and Applicant complies with any reciprocal obligations referenced above.

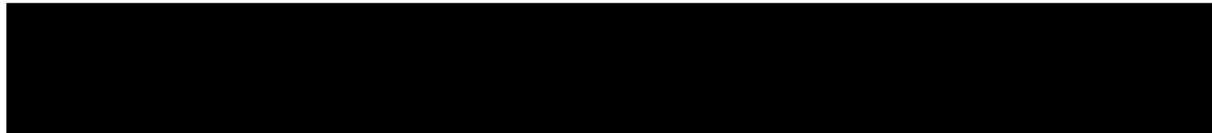
FOR SETTLEMENT PURPOSES ONLY – FRE 408

Cowan, Liebowitz & Latman, P.C.

Jason DeFrancesco, Esq.

October 6, 2015

Page 4



In the event you wish to discuss any of the issues addressed in this letter, please do not hesitate to contact me by telephone at (212) 790-9247 or by email at spc@cjl.com.

Sincerely,

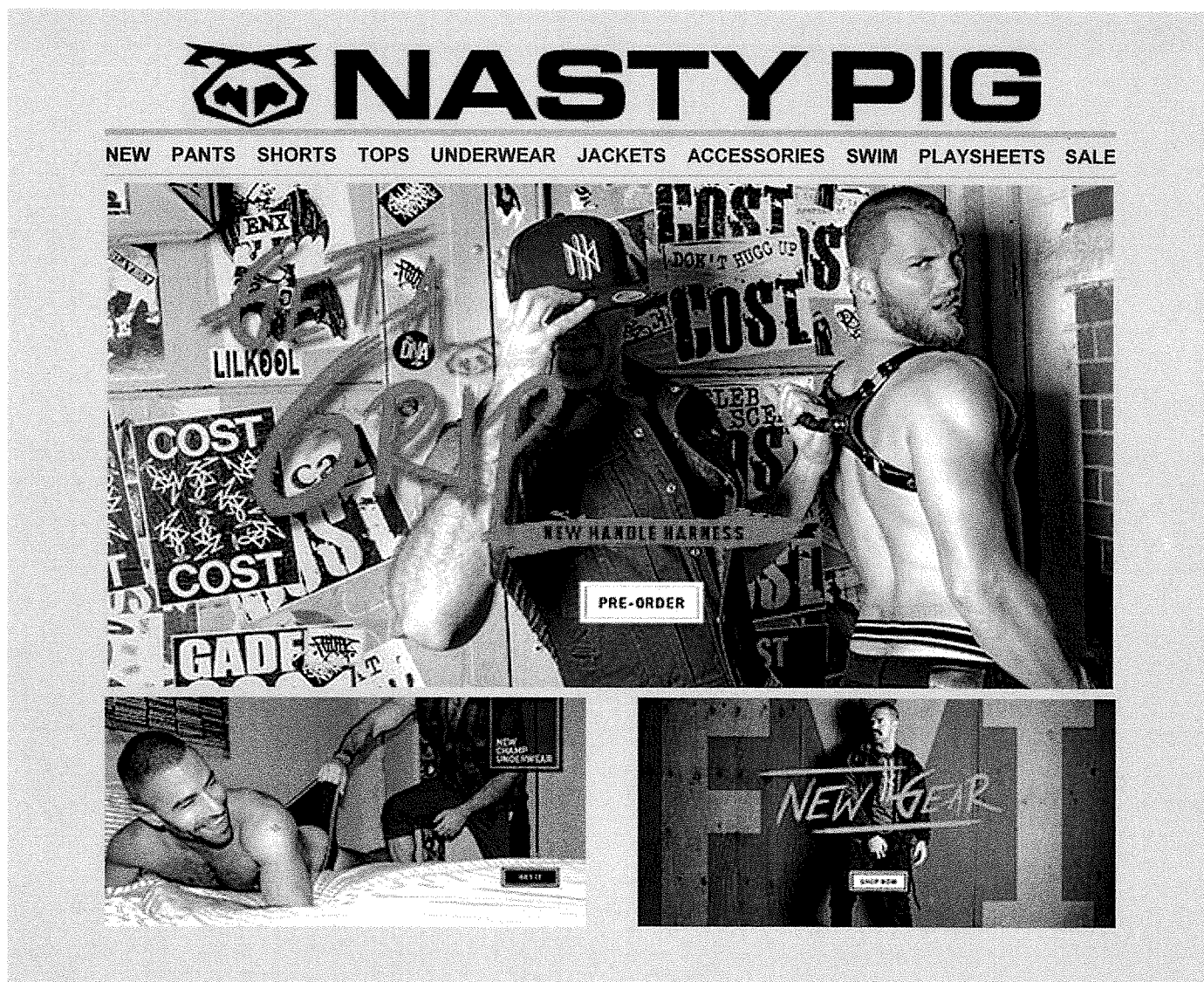
/s/ Scott P. Ceresia

Scott P. Ceresia

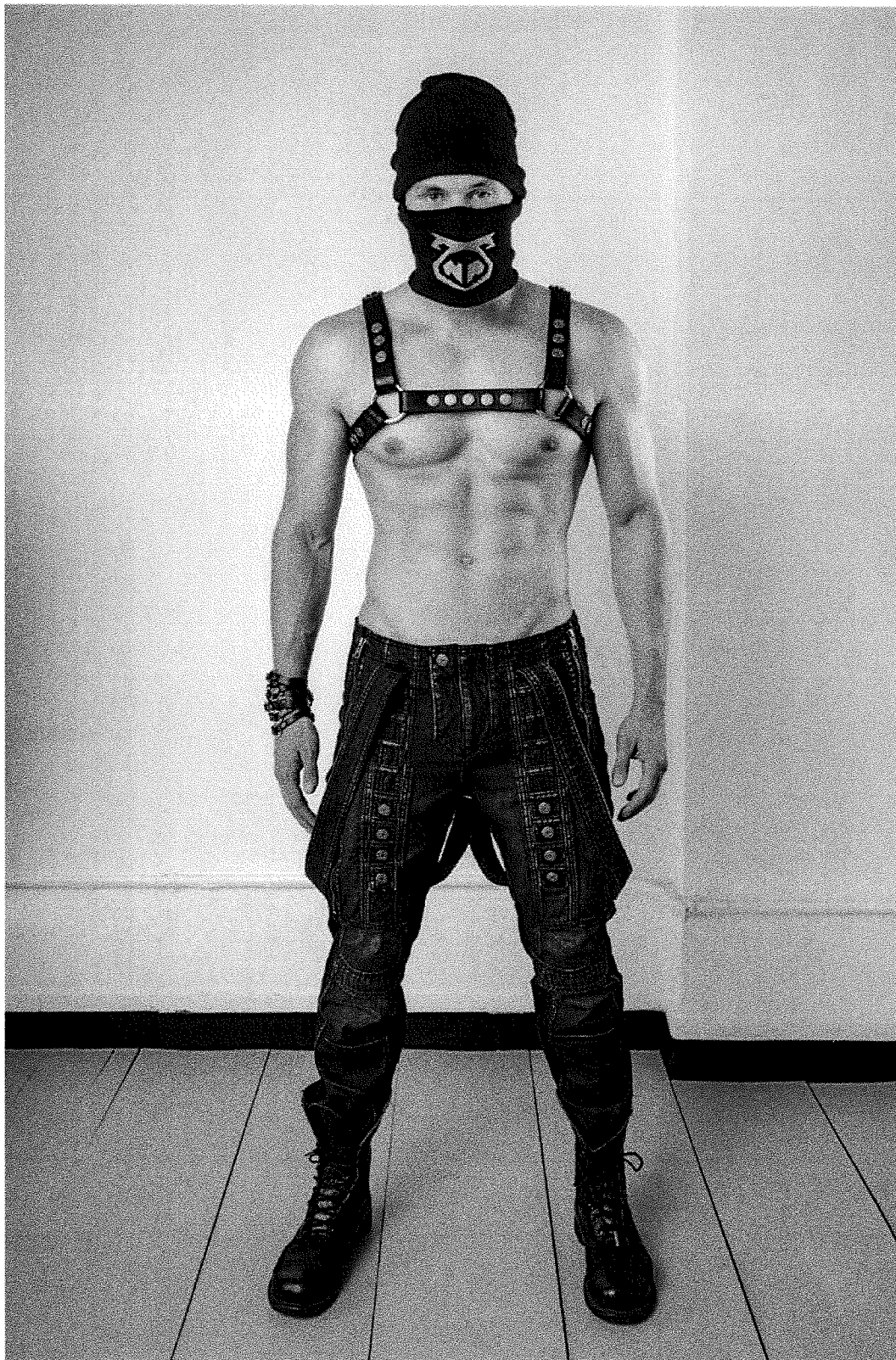
cc (*via email*): Stephen L. Baker, Esq.
Joel Karni Schmidt, Esq.
Eric J. Shimanoff, Esq.

Decl. DeFrancesco,
Exh. G

From: Nasty Pig <info=nastypig.com@mail198.atl21.rgsrv.net> on behalf of Nasty Pig <info@nastypig.com>
Sent: Thursday, September 04, 2014 5:17 PM
To: Schmidt, Joel
Subject: NEW NASTY PIG LEATHER HANDLE HARNESS!!!



NASTY PIG



14

Riot Knit Cap
Auger Jeans

Handle Harness (Choice Cut)

NASTYPIG 000143

Handle Harness #7359

Black

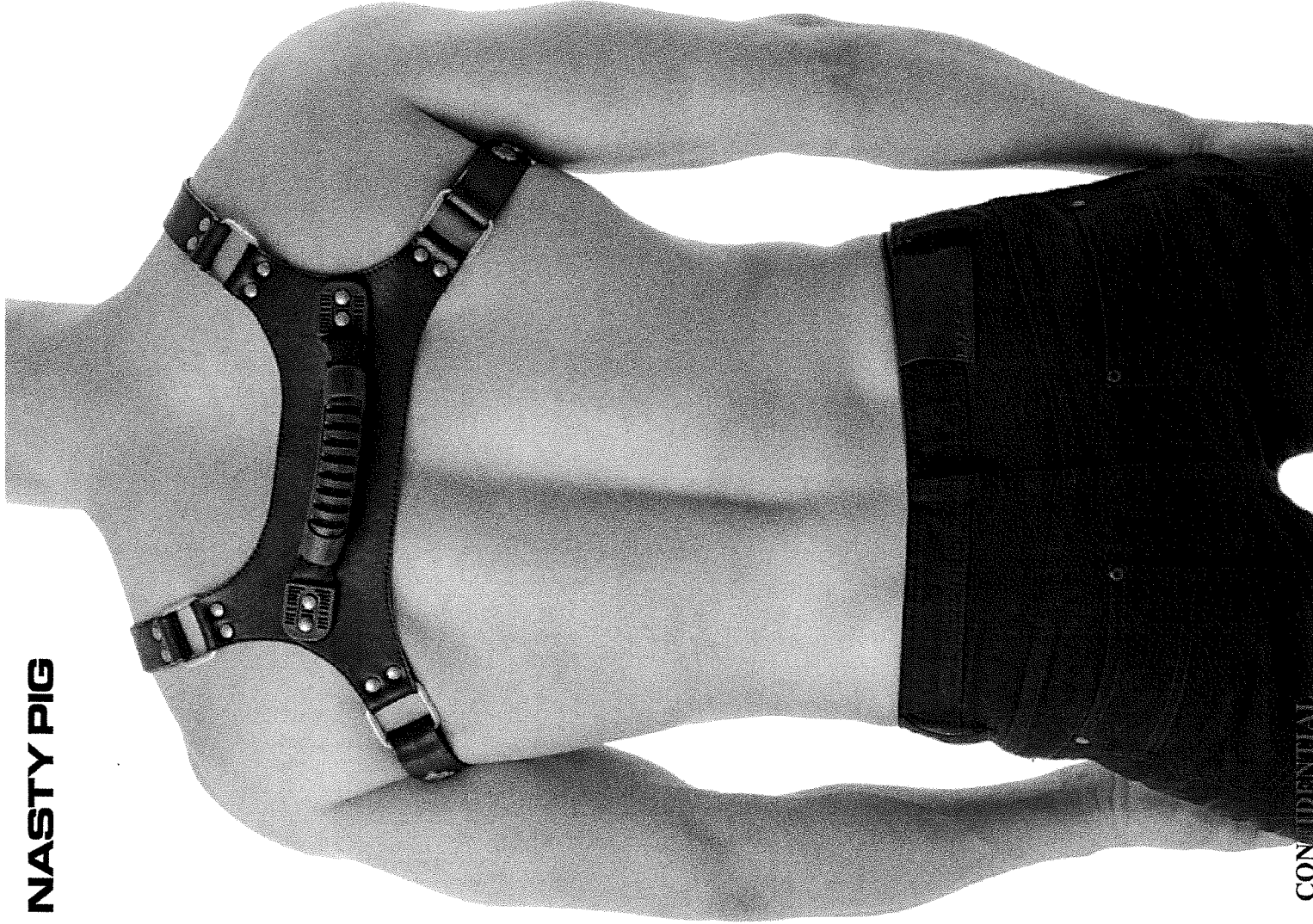
\$195.00 (Suggested Retail)

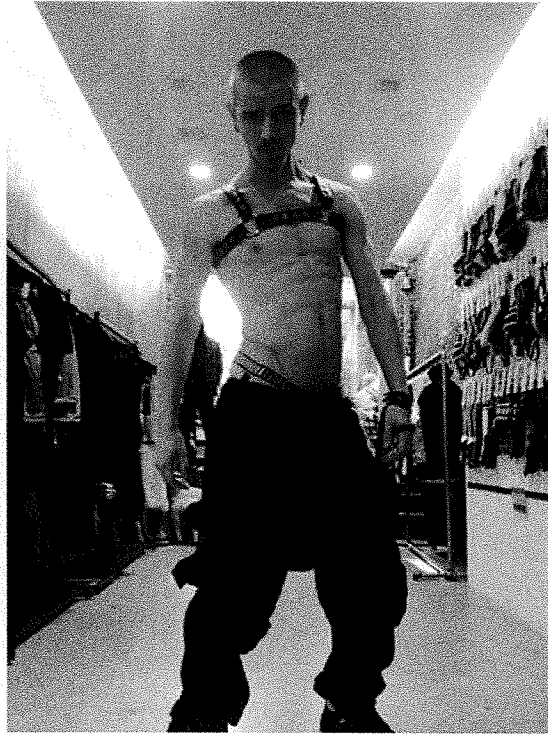
\$100.00 (Wholesale)

Description

Sizes: S/M - L/XL

- * 100% Leather Harness
- * Rubber & Webbing Handle
- * Fully Adjustable Chest & Straps
- * Nasty Pig Snaps





Like · Comment · Share

↗ 1 Share

👍 Ricky Mattingly, Dwight Hankey, Daniel Krestjanoff and 518 others like this. Top Comments ▾



Wil Wever A pearl necklace. And damn, so much testosterone on this page, yet so many cunts. The boy is naturally slender and darn sexy. Shut up!

👍 5 · October 30 at 7:14pm



Nasty Pig Andrew Jarman, Feetmasters Faqurrass Mark McLaughlin Actually Rowan is pretty hungry. Does one of you wanna order us a pizza? Meat lovers, preferably. Our address is 259 W. 19th Street, New York, NY 10011 ❤️ ❤️ ❤️

👍 5 · October 30 at 1:57pm

💬 View more comments

2 of 71

**Nasty Pig**

October 30 🌐

yeah we're not done yet.

BAM.

Chase & Alex rock our new Venom Briefs, Riot gloves & Hardcore Snapbacks backstage at Viva Saturdays

<http://tinyurl.com/New-VenomBriefs>

<http://tinyurl.com/New-Riot-Gloves>

<http://tinyurl.com/The-HardcoreSnapback>



Nasty Pig changed their cover photo.

January 6



Like · Comment · Share

173 4 11 Shares



Nasty Pig shared Winter Party Festival's photo.

January 2

Hey guys...NP CEO here. Two of our Nasty Pig models Daniel and Nathaniel are trying to win a trip to Winter Party. Click the pic below and then like that pic. If they get the most likes and they win the trip I will post pics of them in Nasty Pig jocks...and that will be A LOT for you guys to look at. Trust me #iamNastyPig

Do you think Nathaniel & Daniel D should win a Winter Party vacation package to Winter Party - Miami, March 5th to March 10th? Click LIKE to vote and comment on the photo to tell us your favorite. The photo with the most votes on Friday, January 10th wins.



Like · Comment · Share

80 3

2013

HIGHLIGHTS



Nasty Pig

December 19, 2013

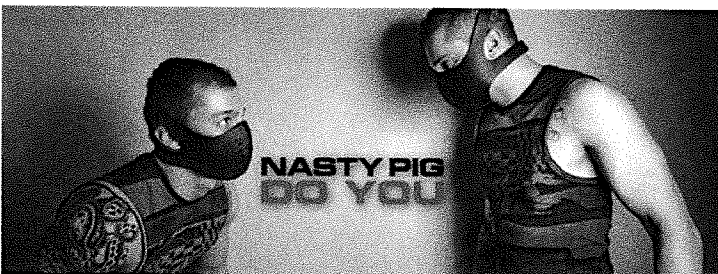
Guess which one of our models sent us this pic of him lounging around in our new NP Baller jock and sock?!?

All the new Baller gear here - <http://tinyurl.com/n5hqgd>



Nasty Pig changed their cover photo.

September 14, 2012



Like · Comment · Share

291 Likes 25 Comments 24 Shares



Nasty Pig

September 6, 2012

Get back to Skool with the first wave of Nasty Pig's Fall 2012 Collection. Including brand new fleece, some of our best tees ever, and something all you Fireman Pant fans will want to check out... Available online (Click here: <http://tinyurl.com/96opajs>) or in-store at NPHQ!



Like · Comment · Share

360 Likes 19 Comments 21 Shares



Nasty Pig shared a link.

August 31, 2012

If you've ever wanted to know more about Nasty Pig, definitely check out this brand new History of our company. We've been making fun clothes that get you laid since 1994!



Nasty Pig - Nasty Pig

store.nastypig.com

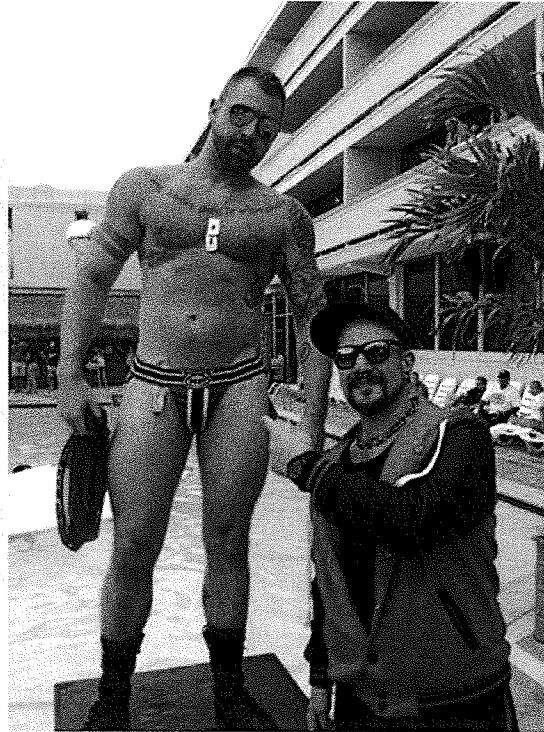
Like · Comment · Share

115 6

**Nasty Pig**

August 21, 2012

We'd point and stare too if we saw Davey poolside in his Nasty Pig Systematic Jock!!!
<http://tinyurl.com/db7dav>



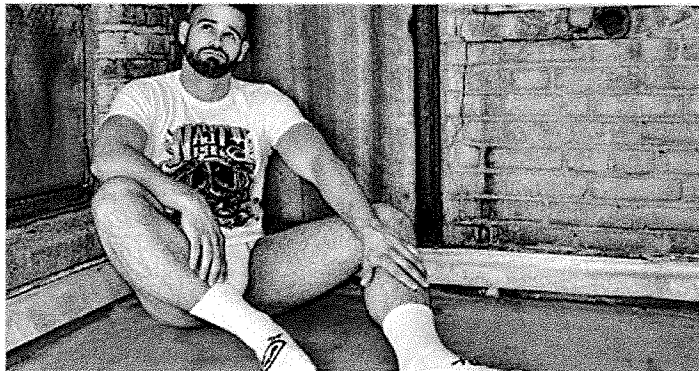
Like · Comment · Share

758 41 22 Shares

**Nasty Pig** shared a link.

August 20, 2012

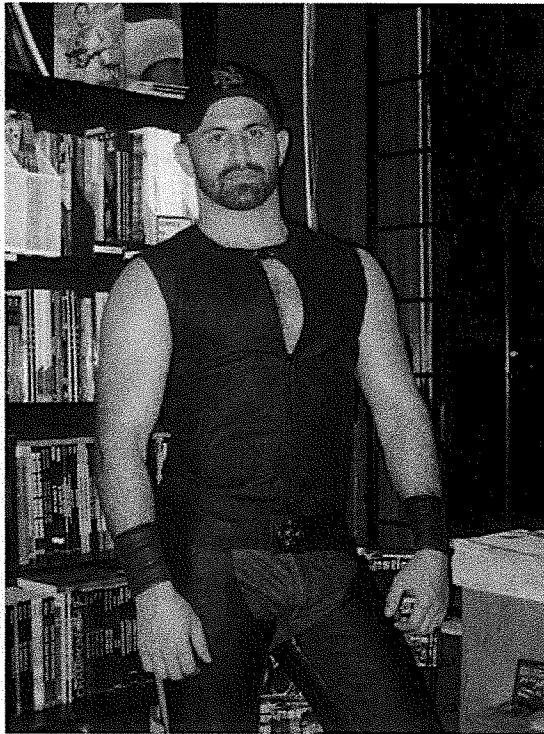
Check out this interview with our Creative Director Frederick Kearney and our CEO David Lauterstein, from the guys at Guyspy.



Style Guyd: Nasty Pig ... Fine Clothing That Gets You Laid
www.guyspy.com

Like · Comment · Share

67 4 1 Share



Like · Comment · Share

315 46



Nasty Pig shared a link.

May 28, 2011

The second single now available on iTunes



Gag On It by Chad Jack Vs Nasty Pig - Download Gag On It on iTunes
itunes.apple.com

Preview and download songs from Gag On It by Chad Jack Vs Nasty Pig on iTunes. Buy Gag On It for just \$4.95.

Like · Comment · Share

14 1



Nasty Pig

May 18, 2011

Who says you can't wear Nasty Pig to work?

Like · Comment · Share

333 55 18 Shares



Nasty Pig shared a link.

April 20, 2011

Nasty Pig will be in Berlin this weekend :@) For all you guys across the pond who have been trying to get one of our NP Shredders, a LIMITED number will hit the racks of Gear Berlin Concept Store at 11am on Friday. And Nasty Pig CEO David Lauterstein will be there to fit you in one.

GEAR - LEATHER RUBBER SPORT URBAN

Like · Comment · Share

22 2



Nasty Pig

April 3, 2011

Now that's what we call head to toe Nasty Pig!



Like · Comment · Share

297 56



Nasty Pig shared a link.

April 1, 2011

New podcast from resident DJ Chad Jack. March Volume 1 AND 2. Download them and get the weekend going. BANGING!!!!

**PodOmatic | Podcast - DJ Chad Jack Presents "GIGABEATS!"**

NYC DJ/ Producer Chad Jack Presents Gigabeats Podcast Best mixes on planet Earth. DJs, radio, performing artists, educators, and more. Get a free podcast, share your faves. Only on PodOmatic.



#TakedownTuesdays RT @tonibear817: @nastypig loving my new Nasty Pig jock!();



2 20

View more photos and videos



Nasty Pig Inc. @nastypig · Aug 5

A what a way to start Tuesday! RT @yoshixkawasaki: In new #haircut, in new gear #jockstrap #leather @nastypig



11 41

View more photos and videos



Nasty Pig Inc. @nastypig · Aug 4

Fur and a NP Baller Jock... YES. RT @skinrubberboi: Pagen Punk. #furrystud #nastypig #jock





OUT



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POPGNOGRAPHY

FASHION

MUSIC

MICHAEL MUSTO

EXCLUSIVES

NEWS

SKIP THE HASSLES OF DRIVING.
AMTRAK TAKES YOU DOWNTOWN TO DOWNTOWN.



FASHION
Eddie Redmayne: Changeling



MOVIES
Guy Ritchie Seduces *The Man From U.N.C.L.E.*



MOVIES
With *Stonewall*, Jonny Beauchamp Is This Fall's Breakout



MOVIES
Eddie Redmayne: An Education



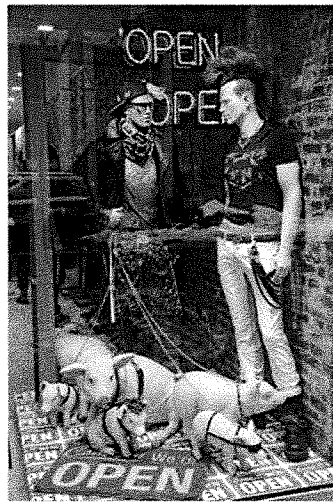
MICHAEL MUSTO
Margaret Cho on Her Fashion Police Job



THEATER & DANCE
Gideon Glick On Finding His Significant Other & His Inner Dandy

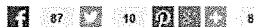
FASHION ▶ TRUMAN SAYS

Nasty Pig Marks Its Territory In New York City



The clothing brand opens new flagship store with a focus on the future

BY STACY LAMBE
FEBRUARY 18 2014 5:00 PM EST



[Images: Nasty Pig; Jeff Eason Selects]

In 1994, Creative Director Frederick Kearney and CEO David Lauterstein founded Nasty Pig. Initially built around the concept of fetish sportswear—think sexy jockstraps and skintight denim—Nasty Pig now offers a full line of upmarket urban clothing (even neckties!) that appeals to both gay and straight guys, and a growing number of lesbians, too.

"The Nasty Pig and 'NP' logos that we developed are ways that people can call to each other," Lauterstein says. "But we will never not be us. I've had two decades of people telling me to change. I'm not going to start now."

The Nasty Pig aesthetic—a refined combo of punk attitude, street graffiti, and high-tech materials—is a clear descendent of Vivienne Westwood's SEX store, which was celebrated at the Met's recent *Punk: Chaos to Couture* exhibit for paving the way for such outré tastes in the marketplace. The fact that such ideas have become more mainstream helps, but the popularity of the brand is due to NP's core appeal to "self-confident" customers, according to Lauterstein. "We cater to gay guys who like to work out and be stylish," he explained. "They tend to be people who appreciate what we do for the quality and the design and who like identifying with a brand they can't get everywhere else." (See: Celebrities Who Have Collaborated With Nasty Pig on T-Shirt Designs for Charity.)

This month, Nasty Pig expanded by opening its new flagship store West 19th Street in New York City's Chelsea neighborhood. Located near its previous location, the new space includes more floorspace to display clothing, as well as an outdoor patio that will surely be used for summer

#LoveTravels

MEET CARMINE & TOSH

SEE THEIR STORY

Follow your passion with us.

MARRIOTT
REWARDS

MOST POPULAR ON OUT



NEWS & OPINION
Meet the Women Who Pick Up the Pieces After Their Husbands Come Out



POPGNOGRAPHY
Here's Meryl Streep Singing 'Bad Romance' in *Ricki and the Flash*



NEWS & OPINION
Chelsea Manning Faces Punishment Over Possession of *Out* Magazine



MOVIES
Guy Ritchie Seduces *The Man From U.N.C.L.E.*



MOVIES
Xavier Dolan Discusses *Tom* at

gatherings. "Chelsea is our home. It's part of our identity. No matter where you open a store, you have to give people a reason to come," Lauterstein said. "Neighborhoods are becoming less and less important to different retail businesses because people are moving all the time. Neighborhoods come and go, but we stayed in Chelsea because it seemed like it had the biggest future for retail. And our customers certainly seemed to have no problems coming to see us there."

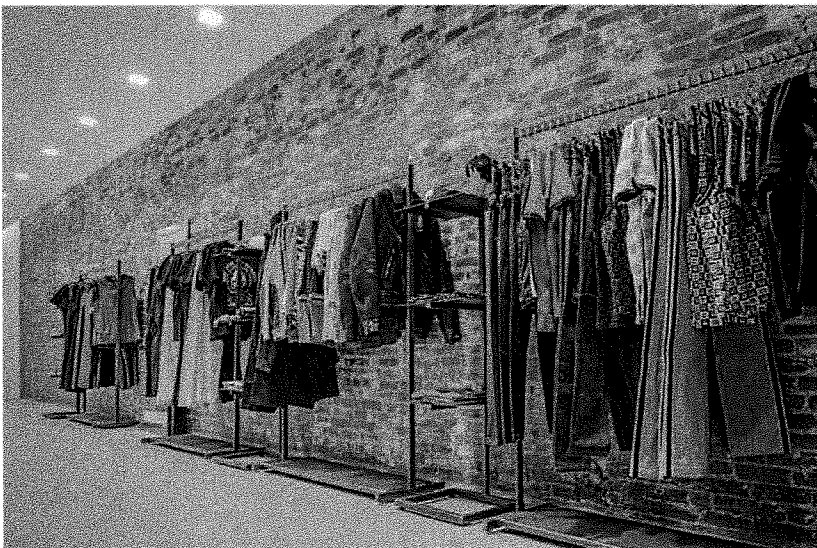
More important to the brand's continued success may be the fact that, as it evolves, so has society, allowing it to push fetishwear aesthetic out of the dark corners of leather bars and onto fashion runways and mainstream magazine fashion editorials. In fact, last year the brand was named to the INC 5000, a competitive list of the fastest-growing private companies in the United States. Even after 20 years, however, Lauterstein insists the brand is still (and will always be) about getting customers laid.

We caught up with Lauterstein—while he was still covered in construction dust a few days before the flagship's opening—and he shared with *Out* his brand's vision. Plus: Check out photos of the new store (located at 259 W. 19th Street in New York City).



On the type of guy who Nasty Pig appeals to:

"No brand includes all types. We are for a specific guy with a specific attitude. Having body hair or a beard has nothing to do with that, but it has to do with a sense of wearing who you are on your sleeve. And that crosses a lot of different types of people, but our customers definitely somebody who wants to represent themselves in that way. We have everyone from the butchest bear to some of the more gorgeous queens in the city show our stuff."

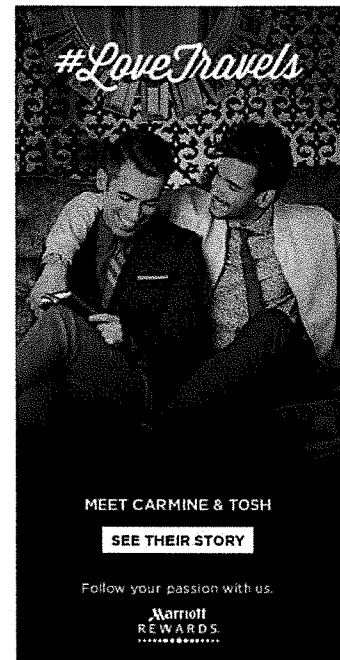


How other brands have taken notice of Nasty Pig's success:

"We have opened a door. We were the first company selling branded jockstraps and we broke out into doing tube socks. We see lots of people doing a sort of fashion fetish thing. Some people do it



the Farm



Out.com Staffers

Tweets from a list by Out Magazine
Tweets from Out.com Staffers

OwlandOwlet

@LarryStilesen

Pay attention #Directioners because brand is @Harry_Styles favorite...and thank you @julien_s for a giving us this! twitter.com/julien_s/status...

Retweeted by Julien Sauvalle

Expand

Alanna Okun

@alanna

easyly the most unrealistic aspect of SATC is how often the restaurants seat incomplete parties

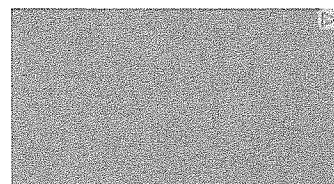
Retweeted by Matthew Breen

Expand

Matthew Breen

@matbreen

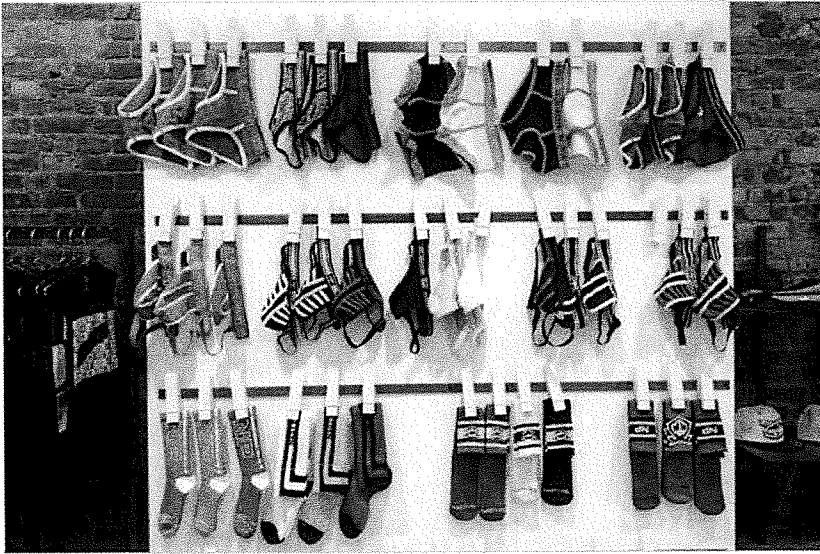
Chelsea Manning Faces Punishment Over Possession of @TheAdvocateMag and @outmagazine out.com/news-opinion/2014/07/29/pict.twitter.com/HWetSYXauu



8/13/2015

<http://www.out.com/fashion/truman-says/2014/02/18/mens-fashion-brand-nasty-pig-marks-its-territory-new-york-city>

into doing tube socks. we see lots of people doing a sort of fashion fetish thing. Some people do it well; some people don't do it as well. However, competition is good for the market and competition is amazing. So we bless them: Bring your A-game."



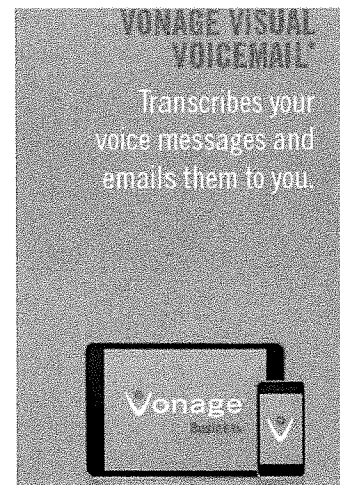
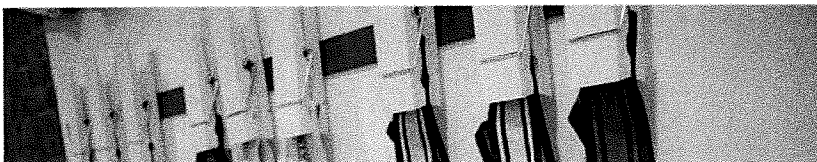
On becoming a mainstay of the New York City community:

"When we opened our first store on 22nd street (in Chelsea) we were part of an artists' collective. We all lived and worked above Sound Factory and Twilight. The idea of having the community become a part of Nasty Pig and a place where people come has been in our DNA since day one. It's part of what makes us special and it's part of what we love. We're not a fetish brand. We're not an underwear brand. We're a NYC brand and we are intensely tied into that scene and that's where we get our inspiration from: The kings and the queens of New York.



How the new store will create a better experience for the customer:

"It's a bigger and better version of what we already do. We are giving our customers more room and a back deck to hang out on the weekends... I want to use that store for a lot of different thing. It's a very versatile space, and it's fantastic that we got the variance to build the back deck. In New York, if you want to be outside, you can go to a park or you have to sit in the two rows of a cafe or a restaurant. This is something kind of unique in the back, and we are really excited to see how it goes."





How the brand will evolve as it grows and expands to a larger customer base:

"We definitely have no desire to change our name. The worst thing in the word we could do is to make Macy's happy. What kind of business strategy is that? Abbreviating or using initials is something every company does. We make garments that don't say "Nasty Pig" at all. That just reflect the position of the designers."



On what's next for the brand:

"There are lots of products that we are working on: sneakers, sunglasses. When Fred [Kearney] and I design stuff, it can't ever look like we slapped our name on someone else's product, everything must be created."

"I would love to know what a Nasty Pig three-piece suit would look like. We've done very successfully silk woven ties. Our customer lives his life openly and wants well-made stuff. There are so many thing we want to try and [my partner and designer] Frederick is ceaselessly creative, he gets bored really easily. We know who our customers are and we know what they want but I think a Nasty Pig suit would be pretty freaking amazing. Perfectly tailored perfectly gorgeous, and no zipper in the bitt. Just a gorgeous suit."





Lauterstein's (pictured third from the right, back row) favorite Nasty Pig product:

"There's a pair of sweatpants that we did two years ago but they were a little ahead of their time. But everyone on our staff still covets them. If we talk about favorite in terms of what I wear the most, it would be those sweats. In terms of what I abuse the most, it's our rubber sheets. Those I put through the wringer the most."

Nasty Pig's new flagship store is now open at 259 W. 19th Street, New York, NY.

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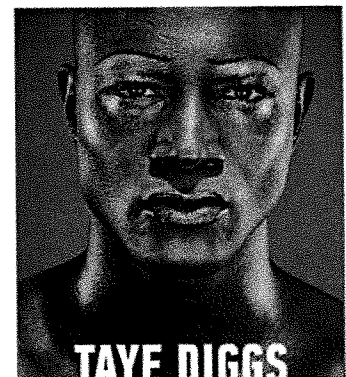
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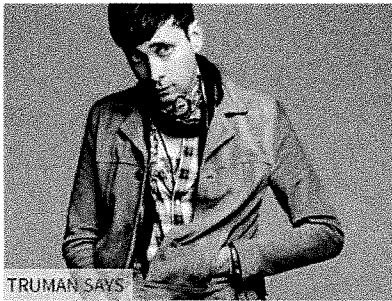


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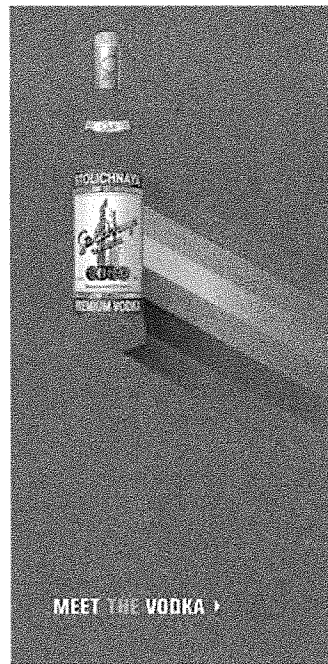


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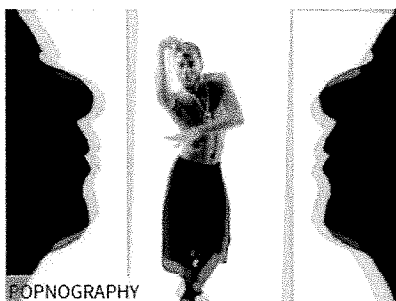


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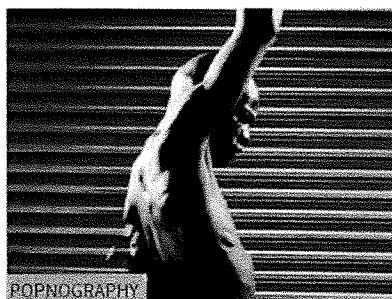


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Editor-in-Chief, The Underwear Expert

Nasty Pig: Keeping It Nasty Since 1994

Posted: 05/11/2012 12:52 pm EDT | Updated: 07/11/2012 5:12 am EDT



Nasty Pig, a masculine sportswear line with an unabashed fetish edge to it, is in its 18th year of existence. Not an easy feat in the men's underwear industry.

You probably already know that the brand has a connection to a raunchy, sexual subculture of some kind, but what you may not know is how the brand got its name. David Lauerstein, the CEO of Nasty Pig told [The Underwear Expert](#) how they chose that exact name: "Nasty Pig is named after our dog -- her name is Piggy," Lauerstein says.

The brand's no bitch, though. "We base our belief system on the idea that men are pigs. So it's about owning those attitudes, but at the same time rejecting the negatives of it. A guy can be cocky but that should stem from the fact that you're a good person. That's how we've built our following without any branding or advertising at all over the years."

And what a following: guys who buy Nasty Pig swear by the brand so much that many send Nasty Pig pictures they take of their Nasty Pig logo tattoos, which Lauerstein says is no longer a rare occurrence. But there's also the moms who will buy the brand's briefs for their sons, or the girlfriends who will see Nasty Pig jocks on the go-go boys at a night out and then buy a pair for their boyfriends. Even for a brand so heavily identified with a kind of marginal sexuality, more and more straight dudes are coming in to the retail store and purchasing a jockstrap or brief.

"The straight guys who buy our stuff represent a different version of the same masculine energy and confidence that we embody," Lauerstein elaborates. "We're less unapologetic, more unbothered about how we portray ourselves. And these guys respond to that -- they say, 'I'm confident, sexy, and I if I like it I'll wear it.'"

NASTYPIG 003931

For the full interview and a collection of our favorite [Nasty Pig photos](#), visit [The Underwear Expert](#).

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